



July 6, 2017

Mr. James E. Clark  
President  
South Carolina State University  
300 College Street NE.  
Orangeburg, SC 29117

**Re: Campus Crime Final Program Review Determination**  
**OPE ID: 00344600**  
**PRCN: 201440328811**

Dear President Clark:

On December 12, 2016, the U.S. Department of Education (the Department) issued a Program Review Report (PRR) regarding South Carolina State University's (SCSU; the University) failure to comply with the requirements of the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (*Clery Act*) and the Drug-Free Schools and Communities Act (*DFSCA*). The original text of that report is incorporated into this Final Program Review Determination (FPRD). The University submitted an acceptable response to the Department's initial report on March 3, 2017. SCSU's response and the supporting documentation submitted with that response are being retained by the Department and are available for inspection by the University upon request. Please be advised that this FPRD may be subject to release under the Freedom of Information Act and may be provided to other oversight entities now that it has been issued to the University.

**Purpose:**

Final determinations have been made concerning the findings identified during the program review. The purpose of this letter is to advise SCSU of the Department's final determinations and to close the review. Please note that this FPRD contains several findings regarding SCSU's failure to comply with the *Clery Act* and the *DFSCA*. Because these findings do not result in financial liabilities, they may not be appealed.

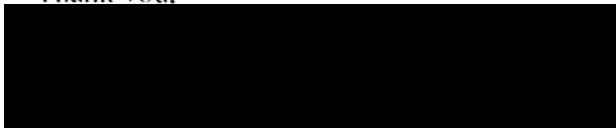
Due to the serious nature of these findings, this FPRD will be referred to the Administrative Actions and Appeals Service Group (AAASG) for consideration of a formal fine pursuant to 34 *C.F.R. Part 668, Subpart G*. If a fine action is initiated by AAASG, detailed information about the action and SCSU's appeal rights will be provided under separate cover.

**Record Retention:**

Records relating to the period covered by this program review must be retained until the resolution of the violations identified during the review or the end of the regular record retention period applicable to all Title IV records, including *Clery Act* and *DFSCA*-related documents, as set forth in *34 C.F.R. §668.24(e)*.

We would like to express our appreciation for the courtesy extended by the officials at SCSU during the program review process. If you have any questions concerning this FPRD or the program review process, please feel free to contact me at 202-377-4349 or [Candace.McLaren@ed.gov](mailto:Candace.McLaren@ed.gov), or Senior Advisor James Moore at 202-377-4089 or [James.Moore@ed.gov](mailto:James.Moore@ed.gov)

Thank you,



Candace R. McLaren, Director  
Federal Student Aid  
Clery Act Compliance Division

Cc: Dr. Tamara Jeffries-Jackson, Vice President for Student Affairs, SCSU  
Mr. Joseph D. Nelson, Chief of Police, SCSU  
Mr. Jason Reed, Clery Act Compliance Officer  
Mr. James Moore, Senior Advisor, Clery Act Compliance Division

Enclosure:

Final Program Review Determination

Prepared for:  
**South Carolina State University**

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**OPEID: 00344600**  
**PRCN: 201440328811**

Prepared by:  
**U.S. Department of Education**  
**Federal Student Aid**  
**Clery Act Compliance Division**

## **Final Program Review Determination**

### **July 6, 2017**

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## A. The Clery Act and DFSCA

The Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (*Clery Act*), in §485(f) of the Higher Education Act of 1965, as amended, (HEA), 20 U.S.C. §1092(f), is a Federal consumer protection statute that provides students, parents, employees, prospective students and employees, and the public with important information about public safety issues on America's college campuses. Each domestic institution that participates in the Federal student financial aid programs under Title IV of the HEA must comply with the *Clery Act*. The institution must certify that it will comply with the *Clery Act* as part of its Program Participation Agreement (PPA) to participate in the Title IV, Federal student financial aid programs.

The *Clery Act* requires institutions to produce and distribute an Annual Security Report (ASR) containing its campus crime statistics. Statistics must be included for the most serious crimes against persons and property that occur in buildings or on grounds that are owned or controlled by the institution or recognized student organizations as well as on adjacent and accessible public property. These crimes are deemed to have been reported anytime such an offense is brought to the attention of an institution's campus police or security department, a local or state law enforcement agency of jurisdiction, or another campus security authority (CSA). A CSA is any institutional official who is 1) designated to receive reports of crime and/or student or employee disciplinary infractions, such as Human Resources and Alternative Dispute Resolution professionals and/or 2) an official that has significant responsibilities for student life or activities such as residential life staff, student advocacy and programming offices as well as athletic department officials and coaches.

The ASR also must include several statements of policy, procedures, and programmatic information regarding issues of campus safety and crime prevention. The *Clery Act* also requires institutions to maintain a daily crime log that is available for public inspection and to issue timely warnings and emergency notifications to provide up-to-date information about ongoing threats to the health and safety of the campus community. In addition, the *Clery Act* requires institutions to develop emergency response and evacuation plans. Institutions that maintain student residential facilities must develop missing student notification procedures and produce and distribute an Annual Fire Safety Report (AFSR) containing fire statistics and important policy information about safety procedures, fire safety and suppression equipment, and what to do in the case of a fire. Finally, the *Clery Act* amendments that were included in Section 304 of the Violence Against Women Reauthorization Act of 2013 went into effect on July 1, 2015. These provisions are aimed at preventing campus sexual assaults and improving the response to these crimes when they do occur.

The *Clery Act* is based on the premise that students and employees are entitled to accurate and honest information about the realities of crime and other threats to their personal safety and the security of their property. Armed with this knowledge, members of the campus community can make informed decisions about their educational and employment choices and can take an active role in their own personal safety and to secure and protect their personal property. For that reason, the office of Federal Student Aid (FSA) must ensure that the information disclosed in each ASR and AFSR is accurate and complete. FSA uses a multi-faceted approach to ensure that institutions comply with the *Clery Act*, which includes providing technical assistance and training programs and materials as well as monitoring and enforcement through program reviews.

FSA may initiate a campus crime program review as a result of a complaint or on public reports about crimes and crime reporting and prevention at a particular institution. FSA also conducts Quality Assurance Reviews in cooperation with the FBI's Criminal Justice Information Service (CJIS) Audit Unit. Program reviews entail in-depth analysis of campus police and security records and interviews with institutional officials, crime victims, and witnesses. During a program review, an institution's policies and procedures related to campus security matters are also examined to determine if they are accurate and meet the needs of the campus community.

Because more than 90% of campus crimes are alcohol and drug-related, the Secretary of Education has delegated oversight and enforcement responsibilities for the Drug-Free Schools and Communities Act (*DFSCA*), in §120 of the HEA, 20 U.S.C. §1011(i) to FSA. The *DFSCA* requires all institutions of higher education that receive Federal funding to develop and implement a comprehensive drug and alcohol abuse prevention program (DAAPP) and certify to the Secretary that the program is in place. The program must be designed to prevent the unlawful possession, use, and distribution of drugs and alcohol on campus and at recognized events and activities.

On an annual basis, each institution must provide a DAAPP disclosure to all current students (including all students enrolled for any type of academic credit except for continuing education units) and all current employees that explains the educational, disciplinary, health, and legal consequences of illegal drug use and alcohol abuse as well as information about available counseling, treatment, and rehabilitations programs, including those that may permit former students or employees to return following expulsion or firing. The distribution plan must make provisions for providing the DAAPP disclosure annually to students who enroll after the initial distribution and for employees who are hired at different points throughout the year.

Finally, the *DFSCA* requires institutions to conduct a biennial review to determine the effectiveness of its DAAPP to identify areas requiring improvement or modification and to assess the consistency of enforcement actions imposed on students and employees that are found to be in violation of applicable Federal, state, and local drug and alcohol-related statutes or ordinances and/or institutional policies and codes of conduct.

Proper implementation of the *DFSCA* provides students and employees with important information about the detrimental consequences of illicit drug use and alcohol abuse. The conduct of a meaningful biennial review provides the institution with quality information about the effectiveness of its drug and alcohol programs. Any failure to implement these requirements may contribute to increased drug and alcohol abuse on-campus as well as an increase in drug and alcohol-related violent crime. The *DFSCA* is monitored and enforced by the U.S. Department of Education (the Department).

## B. Institutional Information

South Carolina State University  
P.O. Box 7395  
300 College Street, Northeast  
Orangeburg, SC 29117

**Institution Type:** Public, HBCU

**Highest Level of Offering:** Doctoral Degree

**Accrediting Agency:** Southern Association of Colleges and Schools - Commission on Colleges

**Current Student Enrollment:** 2,800 (Approx. Fall 2015)

**Percentage of Students Receiving Title IV:** 85% (Approx. Fall 2015)

**Title IV Participation:** (Per ED PEPS Database)

### 2015-2016 Award Year

Federal Direct Loan Program	\$ 30,522,719
Federal Pell Grant Program	\$ 8,689,566
Federal Supplemental Educational Opportunity Grant Program	\$ 759,250
Federal Work-Study Program	\$ 593,555
Federal Perkins Loan Program	\$ 0.00
<b>Total</b>	<b><u>\$ 40,565,090</u></b>

**DL Default Rate:** 2013 - 17.0%  
2012 - 19.3%  
2011 - 22.6%

**Perkins Default Rate:** June 30, 2015 – 20.1 %  
June 30, 2014 – 26.6%  
June 30, 2013 – 20.3%

### **The Institution**

Founded in 1896, South Carolina State University (SCSU; the University) is a public institution located in Orangeburg, SC. SCSU is the only land-grant historically black college or university in South Carolina. Situated on 160 acres, the Orangeburg campus currently has nearly 3,000 students enrolled in programs of study in the liberal arts, business, education, and the sciences. SCSU's Camp Harry E. Daniels facility is situated on 267 acres in Ellore, SC. Per SCSU officials, the University Police Department (UPD) is a full-service law enforcement agency that maintains a 24/7/365 presence and is dedicated to providing a safe campus environment for

students, employees, and visitors. UPD officers are certified by the South Carolina Criminal Justice Academy and the South Carolina Law Enforcement Division and are commissioned as State Constables with full arrest powers and statewide authority. SCSU also employs several parking enforcement and security officers who assist police officers with their duties.

### **C. Background and Scope of Review**

The Department conducted a compliance assessment based on media reports regarding a shooting that occurred on the University's main campus in January 2014. The media assessment raised serious questions about SCSU's compliance with the *Clery Act* and the *DFSCA*. During the assessment, the University was unable or unwilling to provide the Department with timely access to several records and information, despite being granted two extensions. Among other documents, the University did not submit a copy of its most recent ASR and certain sections of the daily crime log. In mid-March 2014, Department officials notified SCSU's President about the delays and difficulties regarding the acquisition of requested documentation. Although the ASR and other documents were eventually submitted, a rudimentary review of the annual report shows it to be seriously deficient.

As a result of the assessment, the Department determined that an off-site program review would be conducted. The University was advised in writing about the review on September 3, 2014. The Department's letter explained the program review process and instructed SCSU officials to submit copies of documents and other information for examination and retention. The letter also explained that interviews with key University officials would be conducted. The objective of the review was to assess SCSU's compliance with the *Clery Act* and the *DFSCA*, with particular focus on the reliability of SCSU's campus crime statistics and the accuracy and completeness of its campus safety, crime prevention, and substance abuse prevention policies, procedures, and programs. The review was conducted by the Clery Act Compliance Division (CACD) and was led by Mr. Ricardo Brown. The Department's letter further advised that the initial review period would be calendar years 2010 - 2013 but that the Department may expand the period under review at any time. Based on the Department's continuing compliance concerns, the period under review was expanded in certain areas to include calendar year 2016.

The review included a detailed examination of SCSU's publications, written agreements, incident reports, arrest records, and disciplinary files as well as policies, practices, procedures, programs, and protocols related to campus safety and crime prevention operations. The review also included a comparison of the campus statistics submitted by SCSU to the Department and the data that was included in the University's ASRs. The review team also conducted interviews with students and SCSU officials with *Clery Act* and or *DFSCA*-related duties.

The Department reviewed samples of police incident reports, arrest records, and student and employee disciplinary files generated during the review period. These reports documented incidents of Part I and Part II offenses reported to the SCSU campus police department, including a sample of Part II arrests and disciplinary referrals for violations of certain laws pertaining to illegal drugs, illegal usage of controlled substances, liquor, and weapons. Both random and judgmental sampling techniques were used to select reports for this review. A subset



of incident reports from the initial sample were also cross-checked against the daily crime log to ensure that crimes occurring within the patrol jurisdiction were entered properly on the log.

**Disclaimer:**

Although the review was thorough, it cannot be assumed to be all-inclusive. The absence of statements in the report regarding specific institutional practices and procedures must not be construed as acceptance, approval, or endorsement of such practices and procedures. Moreover, the absence of such statements also does not relieve SCSU of its obligation to comply with all of the statutory or regulatory provisions governing Title IV, HEA programs including the *Clery Act* and the *DFSCA*.

**D. Findings and Final Determinations**

During the review, several serious violations were identified. SCSU submitted an acceptable response to the Department on March 3, 2017. A summary of the University's response and the Department's Final Determination appears at the end of each finding. Although the response met minimum requirements, additional work will be needed to further substantiate SCSU's claims that adequate remedial measures were taken. Please also note that certain, minor, non-substantive edits were made to the text of the Department's initial report.

**Finding #1: Lack of Administrative Capability**

**Citation:**

*To begin and continue to participate in any Federal student financial aid program under Title IV of the Higher Education Act of 1965, as amended (HEA), an institution must demonstrate that it is capable of adequately administering the programs under the standards established by the Secretary. The Secretary considers an institution to be administratively capable if it administers Title IV of the HEA in accordance with all of the statutory requirements of Title IV of the HEA; the Department's implementing regulations, and the terms and conditions of its PPA. 34 C.F.R. §668.16(a). An administratively capable institution "has written procedures for or written information indicating the responsibilities of the various offices with respect to...the preparation and submission of reports to the Secretary." 34 C.F.R. §668.16(b)(4). The Secretary's standards of administrative capability also require that an institution employ "an adequate number of qualified persons" and ensures that adequate "checks and balances" are in place and that all program operations occur within a system of appropriate "internal controls." 34 C.F.R. §668.16(c)(1). These standards apply to all aspects of the Title IV Program regulations including the Clery Act and the Department's implementing regulations at 34 C.F.R. §668.46.*

**Noncompliance:**

*SCSU substantially failed to develop and implement an adequate Clery Act and DFSCA compliance program during the review period. The overall compliance program evidenced lack of supervisory oversight, and affected personnel were largely unaware of their obligations to ensure substantive compliance with the Clery Act and the DFSCA.*

*The regulations that govern the Title IV, Federal student aid programs establish certain standards that all participating institutions must maintain to be considered administratively capable. The findings detailed in this report indicate multiple deficiencies and weaknesses in SCSU's internal control structure and overall compliance program during the review period. The identified violations are interrelated and show that SCSU failed to compile and disclose accurate and complete crime statistics, to develop and implement adequate campus safety and crime prevention policies and procedures, to formulate and enforce a substantive drug and alcohol abuse prevention program, and to otherwise ensure that the requirements of the Clery Act and the DFSCA were followed. Moreover, the review team identified several contributing factors that further compromised SCSU's campus safety operations, including but not limited to a persistent failure to adequately train staff and ensure that they understand the responsibilities conferred upon them by Federal law and to ensure the requisite communication, coordination, and supervision of campus safety and compliance functions. The consequences of these preventable failures are serious as they contributed to a general failure to inform students, employees, and other stakeholders about the realities of crime on the SCSU campus and in the near-campus community.*

*The regulations that govern the Title IV, Federal student financial aid programs establish certain standards that all participating institutions must meet to be considered administratively capable. The findings detailed in this Program Review Report indicate that SCSU lacked an adequate system of internal controls and did not comply with the Clery Act and DFSCA during the review period. The evidence reviewed by the Department shows that SCSU failed to comply in numerous ways, as detailed in the findings of this report. The evidence also demonstrates that SCSU personnel did not receive adequate training in Clery Act compliance and that the University failed to exercise sufficient oversight, governance, or coordination of those University officials and departments that were responsible for campus safety, student and employee conduct, and the delivery of other safety-related services. The result of these breakdowns was a general failure to keep students, employees, other stakeholders, and the larger campus community fully informed of crime and other threats to their safety and security.*

*For these reasons, the Department finds that SCSU lacked the ability and/or willingness to properly administer the Title IV Federal student financial aid programs in accordance with its PPA. Compliance with the Clery Act, DFSCA, and the Department's regulations are specifically required by the terms and conditions of the University's PPA under which the University participates in the Title IV programs. SCSU's current PPA is effective through December 31, 2016. The PPA requirements can be found at 34 C.F.R. §668.14(c).*

*Impaired administrative capability increases the likelihood that the statutes and regulations that govern the Title IV Programs will not be followed. With regard to the Clery Act, such impairment may result in an institution's systemic failure to provide students and employees with important campus crime information and services that are essential to their safety and security. Impaired administrative capability and weak internal controls are an indication that an institution lacks the ability or willingness to comply with Federal regulations.*

### ***Required Action:***

*As a result of these violations, SCSU must take all necessary corrective actions to cure violations identified in this Program Review Report and sufficiently address organizational deficiencies that contributed to these harms. In addition, the University must develop and implement a system of policy, procedural, programmatic, systems, and training improvements to ensure that these findings do not recur. As part of that process, SCSU also will be required to develop and implement a comprehensive corrective action plan.*

*As part of that process, the University must conduct an institutional self-study of its Clery Act compliance during calendar years 2013 through 2016. SCSU must appoint an institutional official with sufficient knowledge and authority to coordinate the self-study and act as the point of contact for the review team. The self-study must include a comprehensive review of campus security policies and procedures with specific attention to the following:*

- *Identification of reportable incidents;*
- *Classification of criminal incidents;*
- *Collection, compilation, and disclosure of crime statistics;*
- *Identification and coordination of and communications with CSAs*
- *Coordination of and communications with local law enforcement agencies that have concurrent jurisdiction;*
- *Production and distribution of the ASR;*
- *Production and distribution of the AFSR;*
- *Issuance of timely warnings and emergency notifications;*
- *Maintenance of the daily crime log; and,*
- *Compliance with all aspects of the DFSCA and the Department's Part 86 regulations.*

*At the conclusion of the self-study, the University must prepare a detailed report of its findings and submit it as part of its official response.*

*Based on an evaluation of all available information, including SCSU's response, the Department will determine if additional actions are needed to address the finding and will advise the University accordingly in the FPRD.*

### ***Institutional Response:***

In its official response, SCSU management concurred in part with the finding. University officials acknowledged a general failure to comply with the *Clery Act*, the *DFSCA*, and the Department's regulations during the review period. SCSU attributed these failures primarily to "high turnover in its Administration, mainly in Campus Police." The University also noted that it "did not adequately implement Clery compliance checks and balances to ensure that all requirements were adhered to from 2010 to 2012" and that previous "administrations were unaware of the *Clery Act* requirements to publish and distribute ASRs and maintain proper crime logs based on the mistaken belief that merely publishing crime statistics on SCSU's website in

the form of the “Campus Safety and Security Survey” was sufficient to comply with the *Clery Act*.”

SCSU officials also claimed that after a change of administration in 2012, responsible officials, including the Interim Chief of Police became aware of these deficiencies and took steps to begin implementing policies and procedures that would bring the institution into compliance with the *Clery Act* requirements. Per the response, a permanent Chief of Police was hired in 2015. SCSU noted that the Chief took specific actions to get into compliance and to establish Standard Operating Procedures to better ensure that the UPD is properly structured and has effective guidelines in place to better ensure a safe and secure campus environment. Furthermore, SCSU stated that the University’s *Clery Act* Coordinator completed a certification program offered by a well-known consulting firm in 2013 and that he was recertified in 2015 and 2016. Lastly, the response asserted that the University established a *Clery Act* Compliance Committee to conduct a self-study of its *Clery Act* compliance for calendar years 2013 through 2016. The University did not specifically state a basis for its partial challenge of this finding.

### **Final Determination:**

In Finding #1, the review team found that SCSU lacked the requisite administrative capability required of participating institutions as a result of its failure to develop and implement an adequate *Clery Act* and *DFSCA* compliance program during the review period. The finding was supported by the numerous, serious, persistent, and systemic violations of the *Clery Act* and the *DFSCA* that were identified in the Program Review Report. The regulations governing the Title IV, Federal Student Aid programs establish certain standards that all participating institutions must maintain to be considered administratively capable. To begin or continue to participate in any Title IV, HEA program, an institution must demonstrate that it is capable of adequately administering that program by substantially complying with all statutory and regulatory requirements.

During the review period, SCSU did not have an effective internal control structure or communication and coordination strategy to: 1) facilitate the production and distribution of accurate and complete ASRs and AFSRs; 2) compile and disclose accurate, complete, and fully-reconciled crime statistics; 3) identify and train CSAs; 4) issue timely warnings and emergency notifications; 5) maintain required crime and fire logs; 6) develop and implement an effective substance abuse prevention program, and to otherwise comply with Federal law. During the course of the review, the Department learned that the University delegated most of the responsibility for compliance to UPD even though that unit was understaffed, inadequately resourced and included no personnel with any experience or expertise working with the *Clery Act*. As noted in the Department’s initial report, SCSU failed to employ sufficient staff to carry out required activities and conceded that responsible officials were unaware of the University’s obligations to comply with the *Clery Act* and the *DFSCA*. Even once the institution became aware of the deficiencies; SCSU officials did not make all of the necessary reforms.

As noted in the Background and Scope section, the Department initially ascertained that there were potentially serious problems at SCSU during the conduct of a media assessment in early January 2014. As the inquiry progressed, the Department terminated the assessment and



commenced an off-site program review. Early on, SCSU officials admitted that the University was in violation of the ASR and AFSR requirements long before the issue was raised by Department officials as part of the 2014 media assessment. Based on a review of available documents and interviews with institutional officials, the review team determined that, at a minimum, SCSU did not produce ASRs in 2011 and 2012 or AFSRs in 2010, 2011 and 2012 and in so doing, also violated the ASR active distribution and notification requirements. The review team also found that the University did not produce its 2013 ASR until long after the regulatory due date. This is why SCSU was not able to submit a copy of its 2013 ASR when it was requested as part of the assessment that began in February 2014. These failures caused the Department to believe that the University had possibly never created or distributed ASRs prior to the Department's intervention. The *Clery Act* was signed into law on November 8, 1990, and required all participating institutions start producing and distributing ASRs starting in 1992. These violations alone indicate a pattern of serious and persistent violation of Federal law.

The documentary record shows that SCSU did not substantially address the longstanding ASR and AFSR deficiencies until 2014, when it attempted to produce a combined ASR/AFSR. As evidenced throughout this FPRD, SCSU did not implement an adequate system of checks and balances and did not operate in an environment of basic internal controls during the review period. Indeed, it is now clear that that the Department's review was the impetus for nearly all of the remedial steps that were eventually taken and that but for the Department's intervention, it is unlikely that few if any of these actions would have been taken to address these longstanding violations.

The Department has determined that the serious findings identified in the Program Review Report and sustained in this FPRD constitute serious violations of the statutes and regulations governing campus safety and substance abuse prevention and call in question the University's ability and/or willingness to properly administer the Title IV, HEA programs. As a result of these violations, SCSU was required to review and revise its existing policies, procedures, and processes regarding the previously stated discrepancies to develop new internal processes, as needed, to provide reasonable assurance that these violation and other weaknesses will not recur. In its response, SCSU concurred in part with the finding<sup>1</sup> and submitted documentation that purported to show that adequate remedial action was taken.

The Department carefully examined all available information, including SCSU's response and supporting documentation. Based on that review and the University's partial admissions, each of the violations identified in the initial finding is sustained. In upholding this violation, the Department must emphasize that SCSU and all institutions must be continually vigilant and intentional, both operationally and administratively, to provide reasonable assurance of positive *Clery Act* results that support and enhance its campus safety, crime prevention, fire safety, and substance abuse prevention programs. The review team's examination also indicated that the

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<sup>1</sup> In its response, SCSU substantially agreed with all components of Finding #1. Simply stated, there is no substantial disagreement between the parties about the facts of the case. The University's partial concurrence appears to be grounded in the stated assertions that remedial action was eventually taken. Each of the multiple elements of the finding are based on the myriad violations, deficiencies, and other weaknesses noted during the review period. While such measures are an essential part of the review process, the compliance exceptions are not in any way ameliorated by subsequent remedial efforts.

identified violations were, for the most part, satisfactorily addressed by SCSU's revised 2016 ASRs and AFSRs, new and revised internal policies and procedures, and institutional self-study report<sup>2</sup>. It should also be noted that the designated Clery Compliance Officer, who served as the review team's primary point of contact, worked collaboratively with Department officials and contributed positively to the Department's decision to close the review at this time, even though much more work remains to be done. As such, the Department has determined that the University's corrective action plan meets minimum requirements. For these reasons, the Department has accepted the response and considers this finding to be closed for the purposes of this Program Review. However, the officials and directors of SCSU are put on notice that they must continue to develop the institution's campus safety program and take any additional necessary action to fully address the deficiencies and weaknesses identified by the Department. This includes intentional and effective action to provide for the proper custody and control of required documentation and other information needed to substantiate SCSU's efforts to comply. Along these lines, such corrective measures must also address any deficiencies that were identified during the preparation of the University's response or as otherwise needed to ensure that these violations do not recur.

Records secured and analyzed by the Department make it clear that from 2010 to 2012 and after SCSU still did not develop and implement an adequate system of internal controls and that such failure not only affected its ability to comply with the *Clery Act* as required by its Program Participation Agreement (PPA) but also compromised its ability meet the standards of a Title IV fiduciary, keeping in mind that the duties of a Title IV fiduciary extend beyond the management of Federal funds. The violations noted herein severely and negatively impacted the University's ability to operate an effective campus safety program. The problems within the UPD and across the University sub-optimized the safety and security of the campus in ways that went well beyond the requirements of the *Clery Act*, any recent progress notwithstanding.

SCSU is reminded that the exceptions identified above constitute serious violations of the *Clery Act* that by their nature cannot be cured. There is no way to truly "correct" violations of this type once they occur. The requirement to maintain adequate internal controls and ensure the University is administratively capable to implement an effective safety program is the foundational precept of participation in the Title IV programs and is also fundamental to the campus safety and crime prevention goals of the *Clery Act*. SCSU has stated that it has brought its overall campus safety operations program into compliance with the *Clery Act* as required by its PPA. For these reasons, the University is advised that its remedial efforts, whether already completed or taken pursuant to the order of this FPRD, cannot and do not diminish the seriousness of these violations nor do they eliminate the possibility that the Department will impose an adverse administrative action and/or require additional corrective measures as a result.

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<sup>2</sup> The Department notes that the Institutional Self-Study identifies ongoing violations, deficiencies, and weaknesses into 2016. While the Department is concerned about these continuing exceptions, the fact that the University detected and disclosed them provides some basis for confidence that the issues will be resolved. The Department will monitor SCSU's progress in this regard.

## **Finding #2: Failure to Produce and Distribute an Annual Security Report**

### **Citation:**

*The Clery Act and the Department's implementing regulations require that all institutions that receive Title IV, HEA funds must, by October 1 of each year, publish and distribute to its current students and employees, a comprehensive Annual Security Report (ASR) that contains, at a minimum, all of the statistical and policy elements enumerated in 34 C.F.R. §668.46(b). With the exception of certain drug and alcohol program information, cross referencing to other publications is not sufficient to meet the publication and distribution requirements. §485(f) of the HEA; 34 C.F.R. §668.46(b).*

*The ASR must be published and actively distributed as a single document. Acceptable means of delivery include U.S. Mail, hand delivery, campus mail distribution to the individual, or posting on the institution's website. If an institution chooses to distribute its report by posting to an internet or intranet site, the institution must, by October 1 of each year, distribute a notice to all students and employees that includes a statement of the report's availability and its exact electronic address, a description of its contents, as well as an advisement that a paper copy will be provided upon request as set forth by 34 C.F.R. §668.41(e)(1). These regulations also require institutions to provide a notice containing this information to all prospective students and employees. This notice must also advise interested parties of their right to request a paper copy of the ASR and to have it furnished upon request in accordance with 34 C.F.R. §668.41(e)(4).*

*An institution's ASR must include statistics for incidents of crimes reported during the three most recent calendar years. The covered categories include criminal homicide (murder and non-negligent manslaughter), forcible and non-forcible sex offenses, robbery, aggravated assaults, burglary, motor vehicle theft, and arson. Statistics for certain hate crimes as well as arrest and disciplinary referral statistics for violations of certain laws pertaining to illegal drugs, illegal usage of controlled substances, liquor, and weapons also must be disclosed in the ASR. These crime statistics must be published for the following geographical categories: 1) on campus; 2) on-campus student residential facilities; 3) certain non-campus buildings and property; and, 4) certain adjacent and accessible public property as set forth by 34 C.F.R. §668.46(c)(1). When applicable, an institution must also compile, and publish separate crime statistic disclosures for each of its campuses in accordance with 34 C.F.R. §668.46(d).*

*Also, institutions with a police or campus security department must maintain a written, easily understood daily crime log listing all crimes that occur in the above geographical areas as well as crimes which occur within the campus police or security department's patrol area. This reporting requirement applies to all crimes, not merely those crimes listed in 34 C.F.R. §668.46(c)(1) and (3). The log must include the nature, date, time, general location, and disposition of each offense. The crime log must be kept up to date and be freely accessible to any requestor in accordance with 34 C.F.R. §668.46(f).*

*The ASR also must include several policy statements. These disclosures are intended to inform the campus community about the institution's security policies, procedures, and the availability of programs and resources as well as channels for victims of crime to seek recourse. In general,*

*these policies include topics such as the law enforcement authority and practices of campus police and security forces, incident reporting procedures for students and employees, and policies that govern the preparation of the ASR itself.*

*Institutions are also required to disclose alcohol and drug policies and educational programs. Additionally, policies pertaining to sexual assault education, prevention, and adjudication must be disclosed. Institutions also must provide detailed policies of the issuance of timely warnings, emergency notifications, and evacuation procedures. As noted above, all required statistics and policies must be included in a single comprehensive document as set forth by 34 C.F.R. §668.46(b)(2).*

*Finally, each institution must also submit campus crime statistics for inclusion in the Department's "Campus Safety and Security Data Analysis Cutting Tool" (CSSDACT) in accordance with 34 C.F.R. §668.41(e)(5).*

### ***Noncompliance:***

*SCSU violated multiple provisions of the Clery Act and the Department's implementing regulations. Specifically, the University failed to produce ASRs in 2011 and 2012. As a consequence of these violations, SCSU was unable to distribute these required reports to current students and employees and to actively notify prospective students and employees about the availability of the ASRs. The University also did not produce an accurate and complete 2013 ASR and failed to actively distribute this report by October 1, 2013. On March 14, 2014, SCSU officials acknowledged that the University did not produce a 2011 or 2012 ASR and also conceded that the 2013 report was not completed in time to be distributed by the October 1, 2013 deadline. Later, University officials represented that the 2013 ASR was distributed on April 13, 2014, 194 days late. It must be noted that there is no evidence in the record showing that any version of this report was distributed to required recipients prior to the Department's initial compliance assessment that led to the conduct of this program review. Although some campus safety information was located on the University's website, the review team found that SCSU had, in fact, not produced an actual ASR as a single comprehensive document. The Department's review indicates that this compliance failure has persisted for several years, and may date back more than 20 years to the inception of the Clery Act in 1990.<sup>3</sup>*

*The review team also identified several errors and omissions in a basic review of the 2013 ASR, including disclosures required by 34 C.F.R. §668.46(b)(11), commonly referred to as the Campus Sexual Assault Victim's Bill of Rights. These include: 1) a clear statement of policy that the accuser and the accused are entitled to the same opportunities to have others present during a disciplinary proceeding in a case of an alleged sex offense and 2) A clear statement of policy that both the accuser and the accused must be informed of the outcome of any institutional disciplinary proceeding in a case of an alleged sex offense. 34 C.F.R. §668.46(b)(11)(A) and (B). The 2013 report also did not include the required hate crime statistics broken down by offense classification and category of bias, as required by 34 C.F.R. §668.46(c)(3).*

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<sup>3</sup> While the Clery Act was enacted in 1990, institutions were not required to produce an ASR until 1992.



*The Clery Act is first and foremost a consumer protection law based on the premise that students, employees, and other stakeholders are entitled to accurate and complete campus safety and crime prevention information. The transparent communication of this information empowers campus community members to be well-informed and to play an active role in their own safety and security. Any failure to produce an accurate and complete ASR and to actively distribute the report in accordance with Federal regulations deprives the campus community of vital campus safety information to which they are entitled and effectively negates the law's intent.*

**Required Action:**

*As a result of these violations, SCSU is required to take all necessary corrective actions to address these deficiencies and the conditions that led to them. Specifically, the University must review and revise its current policies and procedures that govern the production and distribution of the ASR and to then develop and implement additional internal guidance as needed to provide reasonable assurance that all campus safety operations will be carried out in accordance with the Clery Act going forward and that these violations will not recur. The new procedures must specifically articulate how prospective students and employees will be notified about the report's availability. Then, using its new and revised policies as a guide, SCSU must conduct an internal review of its two most-recent ASRs to identify all omitted and inadequate disclosures, with a special focus on the VAWA provisions.*

*Once all deficiencies are identified, the University must use this information to produce a new or revised 2016 ASR that includes all of the statistical disclosures and policy, procedure, and programmatic information required by 34 C.F.R. §668.46. If revisions are needed to the current report (if one was produced), the new ASR must be actively distributed to all current students and employees no later than January 17, 2017, the first day of the Spring 2017 term.<sup>4</sup> Copies of the original and revised 2016 reports, along with credible evidence showing that each report was actively distributed to mandatory recipients, must be submitted as part of the University's official response.*

*Finally, SCSU must submit a copy of all new and revised policies and procedures as part of its response to this Program Review Report. The University also must provide a certification statement attesting to the fact that the new 2016 ASR was actively distributed in accordance with the Clery Act. This certification must also affirm that SCSU understands all of its Clery Act obligations and that it has taken all necessary corrective actions to reasonably ensure that this violation and the others identified in this report will not recur.*

*Based on an evaluation of all available information, including SCSU's response, the Department will determine if additional actions are needed to address the finding and will advise the University accordingly in the FPRD.*

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<sup>4</sup> The Department will modify the distribution date for the new/revised 2016 ASR referenced above if the initial findings of the file review required as part of the response to Finding #3 shows that SCSU has to make substantial revisions to its campus crime statistics.

### **Institutional Response:**

In its official response, SCSU management concurred with the finding and stated that responsible officials developed and implemented procedures to provide assurance that all campus safety operations will be carried out annually in accordance with the *Clery Act*. SCSU also stated that the Vice President of Student Affairs was charged with distributing the revised ASRs to the campus community. Per the response, all ASR will be posted on the University's website and will be distributed in accordance with the Federal guidelines. Additionally, the University conceded that it did not have written procedures for notifying prospective students and employees about the ASR, its contents, and how to obtain a copy of the report. To remedy this condition, the University stated that the UPD will conduct seminars for new students regarding the availability and location of the ASR.

Lastly, the University stated that it conducted an internal review of its 2015 and 2016 ASRs, and, as a result, had discovered that the Campus Sexual Assault Victim's Bill of Rights and Missing Student information were not included in the ASRs produced after the program review commenced. SCSU officials asserted that the 2015 and 2016 ASR/AFSRs were revised to reflect the changes. The University further stated that the ASRs for 2013 to 2016 were revised and distributed to all current students and employees on March 3, 2017. The University also submitted documents in support of its claims as part of its response. These documents were labeled as Attachment B-1.

### **Final Determination:**

Finding #2 cited SCSU for violating multiple provisions of the *Clery Act* and the Department's regulations, as outlined in the Noncompliance section. Specifically, the review team found that the University failed to produce ASRs for calendar years 2011 and 2012. On March 21, 2014, SCSU officials acknowledged in writing that the University did not produce a 2011 or 2012 ASR. In the same correspondence, SCSU officials also acknowledged that as of the date of the letter, the 2013 ASR had not been completed. As a result of these ongoing failures to comply, the University also violated the ASR active distribution and notification requirements in 2011, 2012, and 2013. In a written response to one of the Department's supplemental information requests, dated September 3, 2014, University officials represented that the 2013 ASR was finally distributed to enrolled students and current employees on April 13, 2014, 194 days late. A copy of the e-mail message used to distribute the report was submitted in support of this claim. Even though the report was eventually distributed, the University did not provide any evidence or even credible assurance that prospective students and employees were ever actively notified about the availability of the report or its contents.

It must also be noted that despite the Department's efforts to assist University officials in the development of this report, several errors and omissions were identified during a cursory review of the 2013 ASR. For example, the 2013 report did not include a statement of policy that the accuser and the accused are entitled to the same opportunities to have others present during a disciplinary proceeding in a case of an alleged sex offense or that both the accuser and the accused must be informed of the outcome of any institutional disciplinary proceeding in a case of

an alleged sex offense. SCSU also failed to include required Hate Crime statistics organized by offense classification and category of bias, as required by 34 C.F.R. §668.46(c)(3).

As a result of these violations, SCSU was required to review and revise its current policies and procedures that govern the production and distribution of the ASR, and develop and implement additional internal guidance as needed to ensure compliance with the Federal guidelines. Additionally, SCSU was required to conduct an internal review of its two most recent ASRs to identify omissions and inadequate disclosures. Further, the University was required to produce a new 2016 ASR that included all statistical disclosures, policy, procedures, and programmatic information as set forth by 34 C.F.R. §668.46(b). SCSU was required to distribute the new ASR to current students and employees by January 17, 2017, and provide a certification statement attesting to the fact that the ASR was distributed in accordance with the *Clery Act*. In its response, the University concurred with the finding, took corrective action, and provided documentation in support of its claims.

The Department carefully examined SCSU's narrative response and supporting documentation. Based on the Department's review and the University's admission of noncompliance, each of the violations identified in the initial finding is sustained. The review team's examination also showed that the identified violations were, for the most part, satisfactorily addressed by the revised 2015 and 2016 ASRs and new and revised internal policies and procedures. As such, the Department has determined that the University's remedial action plan meets minimum requirements and for these reasons, has accepted SCSU's response and considers this finding to be closed for the purposes of this program review. Nevertheless, the officials and directors of SCSU are advised that the University must take any additional actions that may be necessary to address the deficiencies identified by the Department, as well as any other deficiencies and weaknesses that were detected during the preparation of SCSU's response to the Department's report and/or as may otherwise be needed to ensure that these violations do not recur.

SCSU is once again reminded that the exceptions identified above constitute serious violations of the *Clery Act* that, by their nature, cannot be cured. There is no way to truly "correct" violations of this type once they occur. The production of an accurate and complete ASR is one of the most basic requirements of the *Clery Act*. Adherence to the ASR active distribution and notification requirements promotes transparency and makes it easier for campus community members and their families to be well-informed and to take an active role in their own safety and security. SCSU has stated that it has brought its overall campus safety operations program into compliance with the *Clery Act* as required by its PPA. Notwithstanding these efforts, any failure to comply with these requirements deprives students and employees of important campus safety information to which they are entitled. For these reasons, the University is advised that its remedial actions cannot and do not diminish the seriousness of these violations, nor do they eliminate the possibility that the Department will impose an adverse administrative action and/or require additional corrective actions as a result.

### **Finding #3: Failure to Establish an Adequate System to Collect Crime Report Information from Campus Security Authorities**

#### **Citation:**

*The Clery Act and the Department's implementing regulations require institutions to compile and publish accurate and complete statistics concerning the reported occurrence of the following crimes on or within its Clery geography: homicide, manslaughter, forcible and non-forcible sex offenses, robbery, aggravated assault, burglary, motor vehicle theft, and arson. Institutions must also publish statistics providing the numbers of arrests and referrals for disciplinary actions for liquor law violations, drug law violations, and illegal weapons possession. 34 C.F.R. §668.46(c)(1)(B). To comply with these requirements, institutions must develop a system that allows for the collection of incidents of crime reported to any CSA. 34 C.F.R. §668.46(c)(2). Federal regulations define a CSA as a campus police department or campus security department of an institution, any individual or organization specified in an institution's statement of campus security policy as an individual or organization to which students and employees should report criminal offenses, and any official of an institution who has significant responsibility for student and campus activities, including, but not limited to, student housing, student discipline, and campus judicial proceedings. 34 C.F.R. §668.46(a).*

#### **Noncompliance:**

*SCSU failed to collect statistics for incidents of crime that were reported to CSAs in a manner that would ensure that the campus crime statistics included in the ASR and in the CSSDACT data submissions were accurate and complete. The Department must point out that this is a serious and persistent violation that resulted in the underreporting and misclassification of Clery-reportable crimes. Although the precise impact of this deficiency cannot be known, the review team's analysis found that there was insufficient coordination and communication with and among numerous offices and officials that were CSAs and UPD during the review period. These include, but are not limited to, Student Affairs, Residence Life, and Intercollegiate Athletics. The review team also identified several factors that appear to have contributed to this exception. These include:*

- 1. The person designated to handle Clery Act matters never received any relevant training until 2012. Prior to 2012, this individual was unaware of the University's obligations under the Clery Act generally and the requirement to identify CSAs and collect crime information from them in particular.*
- 2. The University's first ASRs did not include any information about CSAs or the important role they play in the crime reporting and crime statistics compilation and disclosure processes. The University also failed to provide training to CSAs about the reporting obligations conferred upon them by the law or about how to transmit information to the officials responsible for the compilation of crime statistics.*
- 3. The responsible employee also failed to request information from CSAs about crimes and disciplinary referrals about which they were aware.*



*These factors worked together to further compromise the validity of the University's crime statistics. The official designated to handle Clery Act matters failed to solicit relevant information from CSAs and CSAs remained unaware of their reporting responsibilities. Interviews conducted with select officials indicate that six of nine officials, or 77%, had never received any Clery Act training. (See Exhibit A). One of the results of this condition is that the University's crime statistics essentially reflected little more than the incidents that were reported to or otherwise processed by UPD.<sup>5</sup>*

*Failure to request and disclose statistics for incidents of crime reported to CSAs and to include this information in an accurate and complete ASR deprives students and employees of important campus safety information to which they are entitled. This vital information empowers interested campus community members to be better informed and to play a more active role in their own safety. This information also serves as an important resource for the media, researchers, policymakers, and other stakeholders.*

**Required Action:**

*As a result of these violations, SCSU must identify all campus job positions that meet the criteria of a CSA. Once all positions are checked, affected employees must be notified and trained on their responsibilities to receive and report incidents of crime. Furthermore, all CSAs must be queried for reports of Clery-reportable offense for calendar years 2013-2015. All information collected during this process must be presented in a summary report that includes amended crime statistics for each calendar year in the file review period and a list of all CSAs by title. This documentation must be part of SCSU's response to this Program Review Report. Additionally, SCSU must establish policies and procedures for gathering and compiling all incidents of crime reported to all internal and external CSAs. These policies and procedures must address access, communication, and coordination by institutional officials. A copy of the revised policies must be submitted with the University's response.*

*Moreover, SCSU is required to take all necessary corrective actions to rectify the deficiencies and weaknesses that caused these violations to occur. As part of that process, the University must identify and correct each instance of misclassification and/or under-reporting and other related deficiencies that were identified during the initial examination. Furthermore, to determine the extent of these violations, the University must conduct a full-file review of all relevant records relating to its crime statistics for calendar years 2012 through and including 2015. The file review must include the following components:*

- *Conduct an examination of all UPD incident reports, local law enforcement records, and other relevant documentation and information generated by CSAs and other institutional officials during the stated period. The relevant data set will include but is not limited to: all institutional records regarding incidents of crime reported to security-related officials and offices, any offices that students and employees are directed to report*

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<sup>5</sup> The Department points out that while an institution is not specifically required to provide training for CSAs it is difficult to adequately advise officials and employees that meet the CSA criteria about the reporting obligations that are conferred upon them by the *Clery Act* without some form of structured training.

*matters of crime or conduct and disciplinary matters, such as the human resources, residence life, student organizations and programming, athletics, fraternity and sorority affairs, and other similar offices. SCSU also must contact all local enforcement agencies to request necessary records that are needed to identify all incidents of Clery-reportable crimes that must be included in the University's crime statistics. Once compiled, errors in past crime statistics disclosures must be corrected. Any corrections to the Department's online campus security database or to SCSU's current or subsequent ASRs must contain a caveat explaining those corrections. In addition, the University must ensure that crimes reported to a local law enforcement agency or any CSAs that manifest evidence that the victim was intentionally selected because of the victim's actual or perceived membership in one of the designated categories is identified as a hate crime. This requirement applies to all crime statistics published in the University's ASRs and in all submissions to the Department's CSSDACT for calendar years 2013 through 2015. Furthermore, SCSU must categorize its crime statistics in accordance with the geographical classifications in 34 C.F.R. §668.46(c)(4).*

- Construct clear audit trails to substantiate the accuracy and completeness of its revised crime statistics for calendar years 2013 through 2015. The audit trails must support the corrected crime statistics for all Clery-reportable crime classifications including Part I Offenses, hate crimes, drug law violations, liquor law violations, and illegal weapons possession arrests and disciplinary referrals. The audit trail is required to ensure that revised statistics are supported with source materials. The audit trail must provide incident report numbers associated with each crime classification, and crime statistics must separate incidents by Clery geography for each calendar year. The University must prepare a clear narrative that explains the findings of the file review and a summary report in spreadsheet format that includes the following fields: incident report number, originally classification, corrected classification, did the institution issue a timely warning in this case, was the institution required to issue a timely warning in this case, was this incident included in the daily crime log, if so, which classification was used.*
- Provide an addendum in the next ASR to indicate all of the Clery-reportable crimes that were previously undisclosed. The University must develop procedures that will ensure that all crimes reported are correctly classified according to Clery regulatory definitions. A copy of those procedures must be submitted with the University's response.*
- Review and improve its policies, procedures, internal controls, and training programs to ensure that all incidents of crime reported to CSAs and local law enforcement agencies are properly classified in accordance with the definitions in Appendix A to Subpart D of 34 C.F.R. Part 668 and are included in its ASR statistical disclosures.*

*Based on an evaluation of all available information, including SCSU's response, the Department will determine if additional actions are needed to address the finding and will advise the University accordingly in the FPRD.*

### **Institutional Response:**

In its official response, SCSU management stated their disagreement with the finding. In support of the University's position, officials submitted a list of campus job positions that fall under the CSA criteria. The response also asserted that on March 2, 2017, all current and former CSAs were asked to provide information about any Clery-reportable incidents of crime that was reported to them during calendar years 2013-2016 that were not disclosed previously. (Attachment A). The University claimed that the survey did not yield any additional reports of offenses and thus the crime statistics reported did not require amendment (Attachment B). The University also stated that its new CSA reporting procedures were submitted with its response (Attachment C).

Per the response, SCSU also conducted an examination of all UPD incident reports, local law enforcement records, and CSA reports for 2012-2016 and determined that all Clery-reportable incidents identified by local law enforcement agencies were properly classified and included in the statistical disclosures in its ASRs and in the data submissions to the Department's online database. The University further asserted that its crime statistics are properly categorized in accordance with the geographical classifications.

Moreover, SCSU asserted that because all Clery-reportable crimes were disclosed for the 2013-2016 time period, no addendum to the next ASR will be necessary. In support of its claims, the University attached a copy of its Clery-reportable crime classifications and definitions to demonstrate its purported compliance with Federal requirements (Attachment E). Finally, SCSU claimed that responsible officials reviewed its internal controls, training programs and policies and procedures to ensure future compliance with the *Clery Act*.

### **Final Determination:**

Finding #3 cited SCSU for multiple violations of the *Clery Act* and the Department's regulations, as outlined in the Noncompliance section above. Specifically, the review team found that the University did not establish a system for collecting information about incidents of crime that were reported to CSAs in a manner that ensured that the crime statistics included in its ASRs and the data submitted for inclusion in the CSSDACT were accurate, complete, and fully-reconciled during calendar years 2010 to 2013.<sup>6</sup> The Department has determined that this condition resulted in the underreporting and misclassification of Clery-reportable offenses. The review team also found that there was insufficient coordination and communication between UPD and CSAs. The problem was further exacerbated by the failure to secure adequate training for the person designated as the Clery Compliance Officer (CCO) and more broadly, for CSAs across the enterprise. As a predictable consequence, responsible officials were unaware of the duties conferred upon CSAs thus contributing to a categorical failure to identify and train CSAs and to provide them with a simplified mechanism to relay crime information that was reported to them.

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<sup>6</sup> There can be little doubt that this condition caused serious and systemic errors in SCSU's crime statistics prior to the initial program review period and after. Moreover, it is not at all clear that the University's initial remedial efforts were implemented in time to detect and correct errors in the statistical disclosures that were included in ASRs produced after 2014.

Further, the University's 2013 ASR, a report produced after the University claims that remedial efforts were initiated, did not include any information about CSA's or the important role they play in the crime reporting, compilation and disclosure processes. Due to the nature and extent of this systemic failure, the full extent of this violation is uncertain and cannot be known, SCSU's efforts to collect data for past periods notwithstanding. These factors worked in concert to further compromise the validity of the crime statistics that SCSU disclosed to the campus community and submitted to the Department during the 2010 to 2013 time period and most likely, beyond.

As a result of the above violations, SCSU was required to identify all campus job positions that meet the CSA requirement. Once all positions were identified, affected employees were required to be notified and trained on their responsibilities to receive and report incidents of crime. The University was also required to query all CSA's for reports of Clery-reportable offenses for calendar years 2013-2015. The information collected during this process was to be presented in a summary report that included amended crime statistics for each calendar year in the file review period and a list of all CSA's by title. Additionally, the University was required to establish policies and procedures for gathering and compiling all incidents of crime reported to all internal and external CSA's. The policies and procedures established were required to address access, communication, and coordination by institutional officials. The University was also required to take all necessary corrective actions to rectify the deficiencies and weaknesses that caused the violations identified in the finding. As a part of the process the University was required to identify and correct each instance of misclassification and/or under-reporting and other related deficiencies that were identified during the initial examination. Furthermore, the University was required to conduct a full-file review of all relevant records relating to its crime statistics for calendar years 2012 through and including 2015. In its response, the University did not concur with the finding but did describe its remedial actions and submitted documents in support of its claims.

The opportunity for an institution to file an official response to an initial report is an integral part of the Program Review process. The response phase ensures that the institution's right to be heard is protected and preserved. It also allows an institution to submit evidence to challenge a finding of violation and/or to raise facts in mitigation. Finally, the response provides an opportunity to describe and substantiate its corrective efforts. To the last point in particular, the University's response raises serious concerns. Rather than providing a clear answer to the stated violation and indicating that efforts are underway to address them, the University chose to stay defensive and alternatively claimed that SCSU complied with the requirement or was not actually required to take the actions detailed in the Program Review Report.

Notably, SCSU recognized that the *Clery Act* requires institutions to include crimes reported to CSAs in its campus crime statistics; however, the University claims at the same time that it does not concur with this finding when that position contradicts its admissions in other sections of the response, especially with regard to the numerous administrative impairments set out in Finding #1 and the failure to produce ASRs over several years. The whole point of soliciting crime data from CSAs is so that information can be included in the statistical disclosures in the ASR. As noted throughout, SCSU failed to produce ASRs over several years (at least through 2013) and even once it began to create reports, serious deficiencies remained throughout the



extended review period into 2016. The mere fact that the University, by its own admission, conceded that it did not create or distribute ASRs in 2011 and 2012, and by virtue of a media assessment conducted by the Department in February, 2014, did not produce its 2013 ASR until April, 2014<sup>7</sup> makes a credible defense to this finding impossible.

SCSU's response implied that it was under no obligation to identify or train CSAs or to even formally notify them of the reporting responsibilities conferred upon them by law. That position is belied by the fact that the University acknowledged previously that the effort to identify CSAs was started before the Department issued its report largely because the CCO identified the previous failure to do so as a serious weakness in the compliance program. Later, this same effort was emphasized as a key part of SCSU's corrective action plan. The University also asserted that the institution should not be held accountable for its CSA-related shortcomings between 2013 and 2016 because the query exercise and file review ordered by the Department did not uncover any previously unreported incidents. This is not a reasonable assertion. There is no way to remedy the failure to collect and disclose statistics for incidents that were reported in previous years. As a practical matter, it is extremely difficult to effectively reach former employees, many of whom were students at the time. The Department required the University to try to reach these individuals because it was the only available option. For these reasons, SCSU's position is not supportable and runs contrary to recent reforms that did not begin in earnest until 2014.

While the *Clery Act* does not set out CSA training as a separate requirement *per se*, the identification of CSAs, the systematic notification of covered officials about the obligations conferred upon them, and the implementation of a simple and effective CSA reporting mechanism are necessary conditions precedent to a compliant *Clery Act* program. Most institutions find that training is the best medium to inform institutional officials about their CSA duties and to give them the tools to meet their obligations. It is in this context that the Department notes that like many other regulatory regimes, the *Clery Act* instructs institutions on what they must do to be compliant, but it does not in every instance, specify how they must do it; that is left to the institution. This flexibility does not mean, however, that the University can simply ignore their regulatory obligations and fail to create a functioning compliance system. The Department regulates over 6,500 institutions with incredibly diverse institutional structures and educational missions, ranging from major research universities to single-classroom career schools. Accordingly, it would be ill-advised and indeed impossible for the Department to articulate a singularly-acceptable approach to complying with the CSA requirements. Each institution must develop and implement a campus safety and crime prevention program that makes sense given the makeup of each school.

As noted throughout this FPRD, the *Clery Act* was signed into law on November 8, 1990 as a basic requirement for all domestic institutions that participate in the Title IV, HEA programs.<sup>8</sup>

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<sup>7</sup> The Department notes that the media assessment that served as the impetus of the program review put SCSU on notice that there were concerns about possible violations. Our investigation strongly indicates that these violations would have likely persisted to the current day if the Department had not intervened.

<sup>8</sup> SCSU was originally approved to participate in the Title IV, Federal Student Aid programs on December 1, 1965. The University was most recently recertified on a provisional basis on April 7, 2014. SCSU's PPA expired on

The Federal investment in higher education and the corresponding need to keep students, families, and other stakeholders informed about important safety matters makes the reason for these requirements obvious. The CSA reporting requirements are an essential part of ensuring that the crime data that is released to students, employees, and the public is accurate and complete. The violations documented in this finding and sustained in this FPRD speak to that purpose and the consequences of noncompliance. Simply put, the full effect of these violations will never be fully known.

For all of these reasons, each element of the initial finding is sustained. The Department has carefully examined all of the available information, including the University's response and supporting documentation. This examination indicated that the identified violations were, for the most part, satisfactorily addressed by SCSU's new and revised internal policies and procedures, and institutional self-study report<sup>9</sup>. As such, the Department has determined that the University's corrective action plan meets minimum requirements. For these reasons, the Department has accepted the response and considers this finding to be closed for the purposes of this Program Review. However, the officials and directors of SCSU are put on notice that they must continue to develop the institution's campus safety program and take any additional necessary action to fully address the deficiencies and weaknesses identified by the Department. This includes intentional and effective action to provide for the proper custody and control of required documentation and other information needed to substantiate SCSU's efforts to comply.

SCSU is once again reminded that the exceptions identified above constitute serious violations of the *Clery Act* that by their nature cannot be cured. There is no way to truly "correct" violations of this type once they occur. The requirement to maintain a systematic process for CSAs to compile, coordinate, and report crime statistics is fundamental to the campus safety and crime prevention goals of the *Clery Act*. Access to this information permits campus community members and their families to make well-informed decisions about where to study and work and empowers individuals to play a more active role in their own safety and security. SCSU has stated that it has brought its overall campus safety operations program into compliance with the *Clery Act* as required by its PPA. Nevertheless, SCSU officials must understand that persistent compliance failures of the type documented in this finding deprived students and employees of important campus security information to which they were entitled. For these reasons, the University is advised that its remedial efforts, whether already completed or taken pursuant to the order of this FPRD, cannot and do not diminish the seriousness of these violations nor do they eliminate the possibility that the Department will impose an adverse administrative action and/or require additional corrective measures as a result.

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December 31, 2016. Currently, the University is approved to participate on a month-to-month basis. As noted previously, the initial *Clery Act* requirements went into effect in 1992.

<sup>9</sup> Once again, the Department must point out that the Institutional Self-Study identifies ongoing violations, deficiencies, and weaknesses into 2016. While the Department is concerned about these continuing exceptions, the fact that the University detected and disclosed them provides some basis for confidence that the issues will be resolved. The Department will monitor SCSU's progress in this regard.

#### **Finding #4: Failure to Comply with Timely Warning Issuance and Policy Provisions**

##### **Citation:**

*Under the Clery Act, institutions must issue timely warnings to the campus community to inform affected persons of crimes considered to be a threat to students and employees. See §485(f) of the HEA. These warnings must be issued to the campus community in any case where an incident of crime listed in 34 C.F.R. §668.46(c)(1) or (c)(3) that represents a threat to students or employees is reported to a campus security authority as set forth by 34 C.F.R. §668.46(e).*

*In addition, institutions are required to include a number of detailed policy statements in the annual security report in accordance with 34 C.F.R. §668.46(b). The policy statements must include a statement of the institution's policy for making timely warnings and clear notice of the procedures that students and others must follow to report crimes and other emergencies that occur on campus as set forth by 34 C.F.R. §668.46(b)(2)(i).*

##### **Noncompliance:**

*SCSU persistently failed to issue timely warnings to advise the campus community about Clery-reportable crimes that may have posed a serious, ongoing threat to students, employees, and the larger campus community. In its response to the Department's data request, the University conceded that no timely warnings were issued during calendar years 2010 and 2011 (See Exhibit C). Moreover, SCSU's timely warning policy did not provide actual notice about the procedures the institution would follow when issuing a warning. Timely warnings must be disseminated to the entire campus community and must give clear and timely notice of ongoing threats to the health and safety of the campus community. These notices also must be issued in a manner that will serve to prevent similar crimes from occurring. For example, the University failed to issue timely warnings in response to multiple armed robberies and sexual assaults that were reported to UPD in calendar year 2010.*

Table 1 includes a sample of Clery-reportable offenses where the available evidence indicates that a timely warning was required. Each of these incidents was reported to have occurred on SCSU's Clery geography.

**Table 1: 2010 Clery-Reportable Incidents that Required a Timely Warning**

<b>Incident</b>	<b>Date</b>	<b>Incident Number</b>	<b>Timely Warning Issued</b>
*Armed Robbery	2/25/10	10-00105	No
*Armed Robbery	4/17/10	10-00236	No
*Armed Robbery	4/20/10	10-00245	No
*Armed Robbery	4/22/10	10-00254	No
*Armed Robbery	5/7/10	10-00313	No
Attempted Robbery	8/30/10	10-00437	No
*Armed Robbery	9/5/10	10-00457	No
Strong Arm Robbery	10/5/10	10-00527	No
Strong Arm Robbery	11/3/10	10-00601	No
Armed Robbery	11/23/10	10-00621	No
Rape	7/23/10	10-00376	No
Rape	7/26/10	10-00382	No
Criminal Sexual Conduct	10/17/10	10-00545	No

\*Assailant used a firearm in the commission of this offense

#### Strong Arm and Armed Robberies:

Several of the armed robberies cited above involve the same fact pattern: an assailant brandished a firearm or otherwise threatened one or more victims and then fled the scene after robbing the victims of their possessions. Although UPD was notified about the incidents, no timely warnings were issued.

Incident Report (IR)# 10-00254, reported to have occurred on 4/22/10, was carried out by four assailants entering the dorms and robbing several individuals on one floor. IR# 10-00313, reported on 5/7/10, noted that the student victim was actually robbed twice on campus but was initially afraid to report the second crime.

#### Forcible Sexual Offenses:

SCSU failed to issue timely warnings for two separate reports of sexual assault. In IR# 10-00376 and 10-00382, the victims were invited to an apartment in University Village. Both victims reported being raped. IR# 10-00382 detailed an incident involving a sexual assault with multiple assailants. IR# 10-00376 detailed a sexual assault by one individual, followed by an attempted sexual assault by another individual. Both incident reports included the same assailant. The University failed to issue a timely warning after the first reported rape. The second reported rape occurred three days later.

SCSU also failed to initiate a timely warning after a report of aggravated assault on a pregnant woman (IR# 10-00308). The report stated that the victim was pulled out of a vehicle by an



unknown male who stabbed her in the stomach. The victim was reported pregnant with serious wounds to her person; these wounds were photographed. Although this assailant left the scene and was captured immediately, no timely warning was issued to the campus community.

In addition, Table 2 shows a sample of incidents of Clery-reportable offenses from calendar year 2011 where the available evidence indicated that a timely warning was required. Each of these offenses involved victims who were confronted by an unknown assailant used a weapon in the commission of the crime.

**Table 2: Clery-Reportable Incidents that Required a Timely Warning**

<b>Incident</b>	<b>Date</b>	<b>Incident Number</b>	<b>Timely Warning Issued</b>
Armed Robbery	1/16/11	11-00009	No
Armed Robbery	9/15/11	11-00306	No
Armed Robbery	9/15/11	11-00307	No
Armed Robbery	11/6/11	11-00376	No
Armed Robbery	11/12/11	11-00384	No

Failure to issue timely warnings about crimes that may pose a serious or ongoing threat to students, employees, and other stakeholders deprives campus community members of access to vital, time-sensitive campus safety information to which they are entitled. Timely warnings and emergency notifications are a primary means of disseminating useful alerts about serious threats to the health and safety of campus community members. This essential information allows interested parties to make informed decisions regarding their own safety and security and supplements the longitudinal statistical data that is included in the ASR.

#### **Required Actions:**

As a result of these violations, SCSU must conduct a review of all Clery-reportable offenses reported from 2013-2015 to determine if a timely warning was required and whether or not a timely warning was issued. If a warning was issued, the timing of the warning and the mode of communication must be ascertained.

If a warning was not issued, SCSU must determine whether or not the University now believes that a warning was required. If SCSU determines that a warning was not required, it must explain its reasoning and provide documentation in support of its determination. In this context, the University is reminded that the mere fact that a subsequent crime of the same or similar type did not actually occur is not a justification for failing to issue a warning in response to an initial Clery-reportable offense that reasonably posed such a threat. The University must prepare a summary report containing this information and submit it with its official response to this Program Review Report.

Although SCSU has taken some measures to improve its timely warning policies and implementation, the University is still required to review and revise its existing timely warning policies and procedure, as needed, to provide reasonable assurance that violations of this type will not recur. As part of this process, SCSU must review and revise its current timely warning

*policy. In accordance with 34 C.F.R. §668.46(e), SCSU must develop and implement policies and procedures to facilitate the timely issuance of warnings for all Clery-reportable crimes that may pose a serious or an ongoing threat to the campus community. SCSU must include in its policy statement for the making of timely warnings all of the required Clery geography that is prescribed by the Clery Act.*

*SCSU must consider the range of factors that will influence its process for determining if a warning will be issued, the timing of the notice, the means/media by which it will be disseminated, and then incorporate this information into its policies and procedures. In its response, the University also must explain how the emergency alert system functions within SCSU's overall emergency management system as well as response protocols and its crime prevention and mitigation strategies. The response must also address the University's assessment of the system's effectiveness and outline how effectiveness is tested. Finally, SCSU must implement specific procedures to ensure the operative facts of an incident, such as dates, times, and geographic locations, are recorded accurately in its incident reports and daily crime logs to ensure that the information in timely warnings and emergency notifications provide useful and reliable information. Finally, SCSU must provide copies of all new and revised internal and public policies and procedures as part of its response to this Program Review Report.*

*Based on an evaluation of all available information, including SCSU's response, the Department will determine if additional actions are needed to address the finding and will advise the University accordingly in the FPRD.*

#### **Institutional Response:**

In its official response, SCSU management concurred with the finding. The University stated it has reviewed all Clery offenses reported from 2013 to 2016 to determine if timely warnings were required and if so, were initiated. The University also conducted a review of Clery offenses that did not require timely. The University posited that the UPD reviewed the timely warning procedures and ensured they were properly updated.

Additionally, SCSU stated that its emergency notification and emergency procedures were submitted with this response which outlines the University's emergency management and notification system. Lastly, the University stated that its emergency system is tested quarterly, distributed via mass texts and emails, and that UPD personnel are trained annually on the E-2 mass notification system.

#### **Final Determination:**

Finding #4 cited SCSU for violating multiple provisions of the *Clery Act* and the Departments regulations. Specifically, in 2010 and 2011 the University persistently failed to issue any timely warnings to advise the campus community of crimes that may have posed an ongoing threat to the campus community. As a result of these violations, the University was required to conduct a review of all Clery offenses reported from 2013 to 2015 to determine if timely warnings were required and whether a timely warning was issued. SCSU was also required to determine: if

timely warnings were issued, the timing of the warning, and the mode of communication. Further, the University was required to determine if timely warnings were not issued, does it now believe a timely warning should have been. Additionally, the University was required to determine that if a timely warning was not required, it must explicate why and provide evidence to support its determination. Finally, the University was required to review and revise its timely warning policies and procedures in accordance with the federal guidelines. In its response, the University concurred with the finding; stated corrective action was taken, and provided support documentation in support of its claims.

The Department carefully examined SCSU's narrative response and supporting documentation. Based on the Department's review and the University's admission of noncompliance, each of the violations identified in the initial finding is sustained. The review team's examination also showed that the identified violations were, for the most part, satisfactorily addressed by the University's response and its implementation of new policies and procedures regarding the issuance of warnings. The Department found that although the University did not initiate any timely warnings in 2010 and 2011 in response to crimes that did in fact pose an ongoing threat, data from the 2013-2015 time period shows some improvement in this regard.

The timely warning provision is a longstanding component of the law that requires institutions to issue safety bulletins any time that a Clery-reportable crime occurs that may pose an ongoing threat to the health and safety of campus community members. In 2008, in response to the Virginia Tech shootings, the *Clery Act* was amended to require schools to develop and implement more sophisticated emergency evacuation, notification, and response procedures. Additional work will be needed to ensure the operational effectiveness of the University's plan and to ensure that the recent improvements are made permanent. With this caveat noted, the Department has determined that SCSU's remedial action plan meets minimum requirements and for these reasons, has accepted the University's response and considers this finding to be closed for the purposes of this Program Review. Nevertheless, the officials and directors of SCSU are advised that the University must take any additional actions that may be necessary to address the deficiencies identified by the Department as well as any other deficiencies and weaknesses that were detected during the preparation of SCSU's response to the Department's report and/or as may otherwise be needed to ensure that these violations do not recur.

SCSU is once again reminded that the exception identified above constitutes a serious violation of the *Clery Act* that by its nature cannot be cured. There is no way to truly "correct" a violation of this type once it occurs. SCSU asserted that it has taken adequate remedial actions and that by doing so, is now in compliance with the *Clery Act* as required by its PPA. Nevertheless, SCSU officials must understand that any failure to issue timely warnings deprives students and employees of important campus safety information to which they are entitled. For these reasons, the University is advised that its remedial actions cannot and do not diminish the seriousness of these violations nor do they eliminate the possibility that the Department will impose an adverse administrative action and/or require additional corrective actions as a result.

## **Finding #5: Failure to Maintain a Daily Crime Log**

### **Citation:**

*The Clery Act and the Department's regulations require institutions with a police or campus security department must maintain a "written, easily understood daily crime log" detailing all crimes that occurred: 1) on campus including residence halls; 2) in non-campus buildings or on non-campus property; 3) on public property; or 4) within the campus police or security department's patrol jurisdiction. This reporting requirement applies to all crimes, not merely those crimes listed in 34 C.F.R. §668.46(c)(1) and (3). The log must include the nature, date, time, general location, and disposition of each offense. The crime log must be kept up to date and be freely accessible to any requestor in accordance with 34 C.F.R. §668.46(f).*

### **Noncompliance:**

*SCSU failed to maintain an accurate and complete crime log in accordance with Federal regulations for the years under review. The daily crime logs provided to the reviewer for calendar years 2010-2013 failed to include all of the information required by the regulations. Specifically, SCSU's crime logs failed to include all required fields: the nature, date, time, general location, and disposition. Although SCSU's daily crime logs list the date of the reported incident, case number, complaint(s), subject(s), victim(s) as well as the disposition of the reported incident, the crime logs fails to include the time or location of each crime, fields required for tracking criminal activity and trends. The University's crime logs also failed to describe the nature of the crime in a manner that was consistent with the information contained in the incident reports. Additionally, some information provided in the 2010 and 2011 crime logs was inconsistent, illegible, and utilized unexplained acronyms that made the logs difficult to read and decipher. (See Exhibit D). Table 3 and 4 summarize the types of errors and inconsistencies noted during the review of the daily crime log.*

**Table 3: 2010 Daily Crime Log Violations**

<b>Violations</b>	<b>Remarks</b>	<b>Total</b>
No Entry	No Incident Report recorded	30
Improperly Classified Incidents	Incident narrative doesn't match DCL entry	11
Illegible Entries	Obscure crime description	8
Unexplained Acronyms/Terms	CSA, CSC, Code Red, PDC	25



**Table 4: 2011 Daily Crime Log Violations**

<b>Violations</b>	<b>Remarks</b>	<b>Total</b>
No Entry*	No incident Report recorded	5
Improperly Classified Incidents	Incident facts doesn't match	12
Miscoded Crimes	DCL entry	
Illegible Entries	Unclear entry	2
Unexplained Acronyms/Terms	CDV, PDC, Code Red, MIRP	42
No Date	Entry made without date	7

*The Clery Act seeks to ensure that campus community members and other stakeholders have timely access to accurate information about campus crime. Any failure to comply with this requirement deprives interested parties of vital information to which they are entitled. Together with timely warnings and emergency notifications, crime log data provides up-to-date information that can help campus community members make informed decisions about their own safety and the security of others. The crime log is to be an up-to-date information source that supplements the statistical disclosures in the ASR.*

**Required Action:**

*As a result of these violations, SCSU is required to review and revise its policies and procedures to ensure compliance with crime log requirements going forward. The revisions must provide for the designation of at least one capable official and a competent back-up to ensure that the crime log is maintained and updated in an accurate and complete manner and that it is readily available to the campus community and the general public for review upon request. As part of its remedial actions, the University also must review and assess the incidents identified in this finding to ensure that the deficiencies and discrepancies referenced in the finding have been eliminated from the current practices of the UPD, including the elimination of all improper classifications and acronyms. A copy of the revised policies and procedures must be submitted with the University's response to this Program Review Report.*

*Based on an evaluation of all available information, including SCSU's response, the Department will determine if additional actions are needed to address the finding and will advise the University accordingly in the FPRD.*

**Institutional Response:**

In its official response, SCSU management concurred with this finding and stated that responsible officials reviewed its policies and procedures regarding the maintenance and accessibility of the daily crime log. SCSU also claimed that the log was modified and updated to bring it into compliance. Additionally, the University stated that the Records Clerk and a Senior Dispatcher were assigned primary responsibility for ensuring that the crime log is properly maintained and updated and is readily available to the to the public. Per the response, the log is available for inspection at UPD on a 24-hours a day basis. To that end, SCSU stated that its

crime logs for the last 60 days are now displayed on UPDs website, and are in compliance with the *Clery Act*.

### **Final Determination:**

Finding #5 cited SCSU for violating multiple provisions of the *Clery Act* and the Department's regulations, as outlined in the Noncompliance section above. Specifically, the review team found that the University did not maintain an accurate and complete daily crime log in accordance with the Federal guidelines. Noted deficiencies included a failure to clearly identify incidents of crime in plain language that can be easily-understood by the general public. Instead, UPD regularly used ambiguous acronyms, language extracted from the state's criminal code, and other inconsistent and unclear abbreviations in the log. As a result of these violations, SCSU was required to review and revise its policies and procedures for maintaining a daily crime log in accordance with Federal regulations. The University was also instructed to designate a capable primary official and a competent alternate to ensure that its daily crime logs are updated in an accurate and complete manner in accordance with 34 C.F.R. §668.46(f) and made accessible to both the campus community and the general public. Finally, the University was required to review and assess all other issues, deficiencies, or shortcomings identified in this finding. In its response, SCSU concurred with the finding, described its corrective action efforts, and submitted documentation in support of its claims.

The Department carefully reviewed all information, including SCSU's response and supporting documentation. Based on that review and the University's admissions, each of the violations noted in the initial finding is sustained. The review team's examination also showed that the identified violations were, for the most part, satisfactorily addressed by the University's new daily crime log and its new and revised internal policies and procedures. For example, further analysis indicated that a competent administrator was designated to oversee the maintenance of the log. The University's new procedures also require that log entries be made in accordance with the Uniform Crime Reporting (UCR) classifications. As such, the Department has determined that SCSU's remedial action plan meets minimum requirements. For these reasons, the Department accepts SCSU's response and considers this finding to be closed for purposes of this program review. Nevertheless, the officials and directors of SCSU are advised that they must take any additional actions that may be necessary to address the deficiencies and weaknesses identified by the Department as well as those that were detected during the preparation of the University's response to the Department's report and/or as may otherwise be needed to ensure that these violations do not recur.

SCSU is once again reminded that the exception identified above constitutes a serious violation of the *Clery Act* that, by its nature, cannot be cured. There is no way to truly "correct" a violation of this type once it occurs. SCSU asserted that it took adequate remedial actions and, that by doing so, is now in compliance with the *Clery Act* as required by its PPA. Nevertheless, University officials must understand that the failure to maintain a daily crime log deprives students, employees, parents, the media, and other stakeholders of access to important campus crime information to which they are entitled. Like timely warnings and emergency notifications, the information in the log provides up-to-date current data about the status of criminal incidents on the campus and in the near-campus community. In this way, the crime log and safety alerts



supplement the longitudinal statistical data that is included in the ASR and the Department's online campus crime statistics database. The University admitted that it failed to maintain a compliant crime log during the 2010-2013 timeframe. Not only is there no evidence that refutes this finding, the Department's inquiry clearly indicates that this condition likely persisted for many years prior to the review. While the Department acknowledges SCSU's nascent efforts to address these violations, these efforts cannot and do not diminish the seriousness of these violations nor do they eliminate the possibility that the Department will impose an adverse administrative action and/or require additional corrective actions as a result.

#### **Finding #6: Failure to Produce and Distribute Annual Fire Safety Reports**

##### ***Citation:***

*As of October 1, 2010, the HEA and the Department's regulations require that all institutions that receive Title IV, HEA funds and maintain an on-campus student housing facility must, by October 1 of each year, prepare, publish, and distribute to its current students and employees, through appropriate publications and mailings, an Annual Fire Safety Report (AFSR) that contains, at a minimum, all of the statistical and policy elements described in 34 C.F.R. §668.49(b). These institutions must disclose fire statistics for each on-campus student residential facility for the three most-recent calendar years. An institution's statistics must accurately and completely identify the number of on-campus fires and the cause of each fire, the number of persons who sustained fire-related injuries that resulted in treatment at a medical facility (including on-campus health centers), the number of fire-related deaths, and the dollar value of property damage caused by such fires. 34 C.F.R. §668.49(c).*

*In addition, the AFSR must include several fire safety information disclosures covering topics such as the type(s) of fire safety systems that are used in each student housing facility, the number of fire drills that were conducted during the previous calendar year, any institutional policies, procedures, and programs regarding: 1) the use and/or possession of portable electrical appliances; 2) smoking and the use/presence of open flames in student housing facilities; 3) evacuation procedures to be followed in the case of a fire; 4) fire safety education and training programs; 5) the institutional official(s) and departments to whom students and employees should report the occurrence of fires so that those incidents can be included in the institution's annual fire statistics; and, 6) any plans for future improvements to the institution's fire safety program. 34 C.F.R. §668.49(b).*

*The AFSR must be published and distributed as a materially-complete document. If the ASR and AFSR are combined into a single publication then the title of both reports must appear on the cover page. Acceptable means of delivery include regular U.S. Mail, hand delivery, campus mail distribution to the individual, or posting on the institution's website. If an institution chooses to distribute its report by posting to an internet or intranet site, the institution must, by October 1 of each year, distribute a notice to all current students and employees that includes a direct link to each report (exact electronic address), a description of its contents as well as an advisement that a paper copy will be provided upon request. The Department's regulations also require participating institutions to provide a notice to all prospective students and employees that includes a statement about the ASR and AFSR's availability, the content of each report, and*

*the exact electronic address of each report, if posted to an internet or intranet site. This notice must also advise interested parties how to obtain a paper copy of the ASR and/or AFSR. Finally, an institution is required to submit its campus crime and fire statistics to the Secretary on an annual basis. 34 C.F.R §668.41(e)(1)-(6).*

***Noncompliance:***

*SCSU failed to comply with multiple provisions of the HEA's fire safety provisions and the Department's implementing regulations. Specifically, the University failed to produce AFSRs in 2010, 2011, and 2012. As a consequence of these violations, SCSU was unable to distribute these required reports to current students and employees and to actively notify prospective students and employees about the availability of the AFSRs. The University also did not produce an accurate and complete 2013 AFSR and failed to actively distribute this report by October 1, 2013. (See Exhibit B). Although, SCSU's 2013 ASR included some items required by the Department's fire safety requirements, the report did not include fire statistics for each on-campus student residential facility (i.e., information regarding the number of fires, cause of each fire, number of people harmed by fire-related injuries, number of fire-related deaths, and value of fire-related property damage) in violation of Federal law.*

*Failure to comply with the fire safety requirements deprives students and employees of important fire safety information to which they are entitled. Access to this information permits campus community members, especially those who live in campus housing, to make well-informed decisions about where to work and study and empowers them to play a more active role in their own safety and security.*

***Required Action:***

*As a result of these violations, SCSU must undertake the same remedial actions that are outlined in the "Required Action" section of Finding #2 regarding its ASRs. In so doing, the University must take all necessary actions to ensure that the new/revised AFSR includes all fire safety policies, procedures, and fire statistics required by 34 C.F.R. §668.49. If SCSU chooses to publish its AFSR as part of the ASR, the title of the report must clearly state that the report contains both the annual security report and the annual fire safety report.*

*Based on an evaluation of all available information including SCSU's response, the Department will determine if additional actions will be required and will advise the institution accordingly in the FPRD.*

***Institutional Response:***

*In its official response, SCSU management concurred with this finding, and stated that responsible officials revised and implemented procedures to provide reasonable assurance that all campus safety operations will now be carried out on an annual basis. The University explained that the Vice President of Student Affairs will be responsible for immediately overseeing the distribution of the revised annual reports. Per the response, officials will ensure that the ASR/AFSR is posted on its website annually and that these reports are distributed to*



campus community members in accordance with Federal requirements. Moreover, SCSU conceded that it did not have written procedures regarding how prospective students and employees were to be notified about the ASR/AFSR's availability; however, going forward, the UPD will conduct seminars to advise new students<sup>10</sup> about the ASR/AFSR and about how to obtain a copy of the reports.

Lastly, the University stated that it conducted an internal review of its 2015 and 2016 ASR/AFSRs, and, as a result, discovered that the Victims' Bill of Rights and Missing Student information was not included, as required. Per the response, the previously-omitted content was included in the revised ASR/AFSRs for 2013 to 2016. SCSU officials also asserted that the revised reports for 2013-2016 were distributed to all enrolled students and current employees on March 3, 2017. Evidence of distribution was submitted as part of the response and was labeled as Attachment B-1.

### **Final Determination:**

Finding #6 cited SCSU for violating multiple provisions of the HEA's fire safety requirements and the Department's regulations, as noted in the Noncompliance section above. Specifically, the review team found that the University did not produce AFSRs in 2010, 2011 and 2012 and as a consequence also failed to comply with the AFSR active distribution and notification requirements during these years. The review team also noted that SCSU failed to produce an accurate and complete 2013 AFSR by the October 1, 2013 due date. As a result of this ongoing violation, the University once again violated the ASR/AFSR active distribution and notification requirement. In a letter dated March 21, 2014, SCSU officials acknowledged each of these violations. In the same correspondence, SCSU's General Counsel also conceded that as of the date of the letter, the 2013 AFSR had still not been completed. In a written response to one of the Department's supplemental information requests, dated September 3, 2014, University officials represented that the 2013 ASR/AFSR<sup>11</sup> was finally distributed on April 13, 2014, 194 days late. A copy of the e-mail message used to distribute the combined report was submitted in support of this claim. Even though the report was eventually distributed, the University did not provide any evidence or even credible assurance that prospective students and employees were ever actively notified about the availability of the report or its contents.

It must also be noted that despite the Department's efforts to assist University officials in the development of this report, several errors and omissions were identified during a cursory review of the 2013 ASR/AFSR. For example, the 2013 combined report did not include detailed fire statistics for each on-campus student residential facility (i.e. information regarding the number of fires, cause of each fire, number of people with fire-related injuries, number of fire-related deaths, and value of fire-related property damage) in violation of Federal law. As a result of

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<sup>10</sup> The Department reminds SCSU officials that procedures must also be put in place to notify prospective employees about the availability of the ASR and AFSR. More directly, it is imperative that the University's procedures provide for the active notification of prospective students and employees while they are in the process of considering or pursuing enrollment and/or employment. Reliance on programming for "new students" would not be adequate to meet this requirement. Once an individual becomes an enrolled student or an employee, they must receive the ASR and AFSR via an active distribution process.

<sup>11</sup> SCSU officials represented that they intended the 2013 report to be a combined 2013 ASR/AFSR.

these violations, SCSU was required to review and revise its current policies and procedures that govern the production and distribution of the AFSR, and develop and implement additional internal guidance as needed to ensure compliance with the Federal guidelines. Additionally, SCSU was required to conduct an internal review of its two most recent ASRs to identify omissions and inadequate disclosures. Also, the Department recommended that, if the University chose to publish the ASR and AFSR as a combined document then the report's title must indicate its combined contents. Further the University was required to produce a new 2016 AFSR that included all statistical disclosures, policy, procedures, and programmatic information as set forth by 34 C.F.R. §668.49(b). Lastly, SCSU was required to distribute the new AFSR to current students and employees by January 17, 2017, and to provide a certification statement attesting to the fact that the AFSR had been distributed in accordance with Federal requirements. In its response, the University concurred with the finding, described its corrective efforts, and submitted documents in support of its claims.

The Department carefully reviewed all information, including SCSU's response and supporting documentation. Based on the Department's review and the University's admissions, each of the violations identified in the initial finding is sustained. The review team's examination also showed that the identified violations were, for the most part, satisfactorily addressed by the University's implementation of new policies and procedures to produce and distribute its ASRs and AFSRs as a single publication entitled, "2016 Annual Security and Fire Safety Report." As such, the Department has determined that the University's remedial action plan meets minimum requirements and for these reasons, has accepted SCSU's response and considers this finding to be closed for the purposes of this program review. Nevertheless, the officials and directors of SCSU are advised that the University must take any additional actions that may be necessary to address the deficiencies identified by the Department, as well as any other deficiencies and weaknesses that were detected during the preparation of SCSU's response to the Department's report and/or as may otherwise be needed to ensure that these violations do not recur.

SCSU is reminded that the exception identified above constitutes serious violations of the HEA that, by their nature, cannot be cured. There is no way to truly "correct" violations of this type once they occur. All institutions that maintain on-campus student housing are required to develop and implement a basic fire safety program and to be transparent about its policies and procedures. This information must be made part of an accurate and complete AFSR and be distributed to the campus community. These requirements are fundamental to the law's fire safety goals and are of special relevance to students residing in campus housing. The University asserted that it has taken adequate remedial actions and that by doing so; it is now in compliance with the Department's fire safety provisions as required by its PPA. Nevertheless, SCSU is advised that its remedial actions, whether already completed or planned for the future, cannot and do not diminish the seriousness of these violations nor do they eliminate the possibility that the Department will impose an adverse administrative action and/or require additional corrective actions as a result.

## **Finding #7: Drug and Alcohol Abuse Prevention Program Requirements Not Met**

### **Citation:**

*The DFSCA and the Department's Part 86 Regulations require each institution of higher education (IHE) to certify that it has developed and implemented a drug and alcohol abuse prevention program (DAAPP). The program must be designed to prevent the unlawful possession, use, and distribution of drugs and alcohol on campus and at recognized events and activities.*

*On an annual basis, each IHE must provide the following information in writing to all current students (enrolled for any type of academic credit except for continuing education units) and all current employees:*

- 1) A written statement about its standards of conduct that prohibits the unlawful possession, use, or distribution of illicit drugs and alcohol by students and employees;*
- 2) A written description of legal sanctions imposed under Federal, state, and local laws and ordinances for unlawful possession or distribution of illicit drugs and alcohol;*
- 3) A description of the health risks associated with the use of illicit drugs and alcohol abuse;*
- 4) A description of any drug or alcohol counseling, treatment, and rehabilitation/re-entry programs that are available to students and employees; and,*
- 5) A statement that the IHE will impose disciplinary sanctions on students and employees for violations of the institution's codes of conduct and a description of such sanctions.*

*The distribution plan must make provisions for forwarding the DAAPP disclosure annually to students who enroll at a date after the initial distribution and for employees who are hired at different points throughout the year.*

*In addition, each IHE must conduct a biennial review to determine the effectiveness of its DAAPP and to ensure consistent enforcement of applicable drug and alcohol-related statutes, ordinances, and institutional policies against students and employees found to be in violation. The IHE must also produce a report of findings, maintain its supporting materials, and provide them to the Department upon request. 34 C.F.R. §§86.3 and 86.100.*

### **Noncompliance:**

*SCSU violated multiple provisions of the DFSCA and the Department's implementing regulations. Specifically, the University failed to develop and implement a comprehensive DAAPP that addresses all required program components. In response to the review team's request for DAAPP materials, SCSU provided a copy of the University's Drug-Free Workplace Policy, a separate statutory requirement administered by the U.S. Department of Labor. The University also did not produce an annual DAAPP disclosure that summarizes the program and, as a consequence, was not able to actively distribute required program materials to current employees and students enrolled for academic credit.*

*The deficiencies also caused SCSU to violate the biennial review requirement. All institutions that receive Federal education funding are required to conduct a biennial review to assess the effectiveness of its DAAPP and the consistency of sanctions imposed for violations of its disciplinary standards and codes of conduct. (See Exhibit E). The implementation of an adequate DAAPP and the dissemination of program materials are necessary precursors to a test of program effectiveness. Based on information developed during the review, the team found that SCSU had never conducted a biennial review.*

*Failure to comply with the DFSCA's DAAPP requirements deprives students and employees of important information regarding the educational, disciplinary, health, and legal consequences of illegal drug use and alcohol abuse. Failure to comply with the biennial review requirements also deprives the institution of important information about the effectiveness of its own drug and alcohol programs. Such failures may contribute to increased drug and alcohol abuse as well as an increase in drug and alcohol-related violent crime.*

***Required Action:***

*As a result of these violations, SCSU must review and revise its existing drug and alcohol prevention program materials and develop new content as required by the DFSCA. Additionally, SCSU must ensure that a comprehensive DAAPP is completed with all the required elements detailed in 34 C.F.R. 86.100. In addition, the University must perform the following:*

- 1) Develop detailed policies and procedures that will ensure that the DAAPP disclosure is distributed annually to every student who enrolls for any academic credit and to all employees. This policy must provide for active delivery to every member of the campus community regardless of when they enroll or are hired and irrespective of the duration of enrollment/employment. A copy of SCSU's new DAAPP and new distribution policy must accompany with its response to this Program Review Report.*
- 2) Distribute the new DAAPP disclosure and provide documentation evidencing the distribution as well as a statement of certification attesting to the fact that the materials were distributed in accordance with the DFSCA. This certification must also affirm that the institution understands all of its DFSCA obligations and that it has taken all necessary corrective actions to ensure that these violations do not recur;*
- 3) Conduct a biennial review to measure the effectiveness of its DAAPP and prepare a report of findings. SCSU's report must include a description of the research methods and data analysis tools that were used to determine the effectiveness of the program and the consistency of its enforcement strategy. The report must identify the responsible official(s) and office(s) that conducted the biennial review. Finally, the biennial review report must be approved by the University's chief executive and/or its' Board.*
- 4) Establish policies and procedures to ensure that all subsequent biennial reviews are conducted in a timely manner and are fully documented and to take all other necessary action to ensure that this violation does not recur. A copy of these new policies and procedures must accompany SCSU's biennial review report.*



*SCSU must incorporate the findings from its biennial review into its DAAPP. Because the DFSCA went into effect in 1990, longstanding practice dictates that the biennial review is normally conducted in even-numbered years; however, SCSU's failure to comply with all elements of the biennial review requirement necessitates the need to commence a new study immediately, as noted above. Going forward, this will result in this and subsequent biennial reviews and reports being completed in odd-numbered years.*

*Based on an evaluation of all available information, including SCSU's response, the Department will determine if additional actions are needed to address the finding and will advise the University accordingly in the FPRD.*

*In closing, the Department must note that the findings documented in this report constitute serious violations of the Clery Act and the DFSCA that by their nature cannot be cured. There is no way to truly "correct" a violation of these important campus safety and substance abuse prevention laws once they occur. The University will be given an opportunity to conduct a meaningful review of its current policy and procedures and to develop and implement new policies and procedures, as needed. Copies of all new and revised internal guidance must accompany the University's response to this Program Review Report. Notwithstanding any remedial efforts undertaken pursuant to this finding, SCSU is nevertheless advised that such remedial measures cannot and do not diminish the seriousness of these violations nor do they eliminate the possibility that the Department will impose an adverse administrative action and/or require additional corrective measures as a result.*

#### **Institutional Response:**

In its official response, SCSU management concurred with the finding and stated that responsible officials developed new program materials for students and employees. Management also asserted that distribution procedures were implemented and that the new annual disclosure was sent to all required recipients. Additionally, SCSU asserted that responsible officials understand the law's requirements and will carry out required functions accordingly. In support of these claims, the University submitted copies of selected documents, including elements of the DAAPP, an initial biennial review report (1 page), a certification statement, and new internal policies and procedures.

#### **Final Determination:**

Finding #7 cited SCSU for violating multiple provisions of the DFSCA and the Department's Part 86 regulations, as outlined in the Noncompliance section above. First, the review team found that SCSU did not develop and implement a DAAPP until after the initiation of the media assessment and resultant program review. This condition resulted in several other violations, including a failure to distribute an annual DAAPP disclosure to enrolled students and current employees that persisted into 2014. In correspondence prepared by the University's General Counsel dated September 3, 2014, SCSU acknowledged that the first annual distribution of Part 86 program materials took place on April 1, 2014.

Furthermore, the review team found that SCSU persistently failed to conduct biennial reviews prior to the Department's intervention in 2014. Of course, the failure to develop and implement a compliant substance abuse prevention program would have made it impossible to conduct a study of the nonexistent program's effectiveness and fairness. As a consequence, the University also failed to produce the required reports of findings, recommendations, and supporting documentation for each institutional self-study. In the letter noted above, then General Counsel, Craig Burgess, noted that he was unable to produce any such reports because no reviews had been conducted as on that time. While the review team specifically tracked this violation to the beginning of the view period in 2010, it is now clear that this condition persisted for many years prior to the review, most likely back to 1990, the first year that institutions were required to take action under the law.

These separate and distinct violations necessarily follow from each other because the biennial review is primarily a study of the DAAPP's effectiveness. Therefore, an institution cannot conduct a proper biennial review until it has a fully-functional DAAPP in place and program requirements and standards of conduct are communicated clearly to all members of the campus community. Prior to April 2014, SCSU did not have a DAAPP and was therefore unable to distribute program materials. Immediately after a basic program was put in place, such materials were distributed on April 1, 2014. It is essentially impossible to conduct a substantive biennial review until a DAAPP has been in place for a long enough period of time to yield program data, thereby extending the period that the University was out of compliance. As a result of these violations, SCSU was required to review and revise any existing DAAPP materials and develop new program content, as needed to comply with Federal law. See the Department's regulations at *34 C.F.R. § 86.100*. The University was also required to produce and distribute an accurate and complete annual DAAPP disclosure and to actively distribute it to all campus community members in accordance with Federal requirements and the institution's new internal procedures. In addition, SCSU was required to conduct a substantive biennial review and produce an initial report of findings, recommendations, and supporting documentation. Finally, University officials were directed to submit copies of all new and revised program materials, policies, and procedures along evidence that Part 86 program materials were distributed in the required manner, and a certification statement attesting to its remedial efforts. In its response, University officials concurred with the finding, described their remedial actions, and submitted documents in support of their claims.

The Department carefully reviewed all available information, including SCSU's narrative response and supporting documentation. Based on this review and the University's admissions, each of the violations noted in the initial finding is sustained. The review team's examination also showed that most of the identified violations were, for the most part, adequately addressed by SCSU's new Part 86 program materials and new and revised internal policies and procedures. In most material respects, the responsive statements and supporting documentation shows improvement on the part of SCSU and for the most part, meet the Department's minimum requirements, with one serious exception. Specifically, the response does not conclusively show that a comprehensive biennial review was conducted and documented. In the response, SCSU officials stated that, going forward; biennial reviews will be conducted in a timely manner and will be documented fully. This statement of future action does not indicate that a full review was conducted, as directed in the Program Review Report.

As part of the response, the University submitted a one-page document entitled “Biennial Review Report 2017” (Attachment E). It appears that SCSU presented this document to satisfy the biennial review-related elements of the of the Required Action section of the Program Review Report even though it does not even remotely address most of the requirements of such a review. Firstly, the document does not describe the research methods or data analysis processes that were used to make assessments about effectiveness or fairness. Moreover, while this brief report indicates that SCSU officials did in fact identify elements of the program that required revision or enhancement, no mention is made about what components were deemed inadequate or how those determinations were made. More importantly, the report provides no evidence or even basic assurances that the needed changes were actually made. In this context, it is important to point out that the DAAPP was not developed until 2014 and then nothing was done to make sure that it was actually working until officials were forced to respond to the Program Review Report. University officials, including the General Counsel, were certainly aware of the requirement by 2014 when they were questioned by the lead reviewer about the University’s nonexistent DAAPP and asked to produce records generated during the conduct of biennial reviews.

To finally and fully address this ongoing deficiency, SCSU must either submit evidence showing that a substantive biennial review was conducted and documented or must conduct a new review that will meet minimum Federal requirements. If a full review was conducted pursuant to the requirements of the Program Review Report, the University must prepare a detailed report of its findings, recommended improvements, an implementation strategy, and supporting documentation. This report must be submitted via electronic mail within 30 days of receipt of this FPRD to the CACD at [clery@ed.gov](mailto:clery@ed.gov). If University officials determine that the initial review did not meet Federal requirements, they must advise the Department of that fact in writing within 15 days via electronic mail and then commence a substantive review guided by its new policies and procedures and Federal law. Under this scenario, a copy of SCSU’s new biennial review report must be submitted within 45 days of receipt of this FPRD.

The report must be detailed and address conditions and issues that are identified during the review. For example, the materials included in the response noted that SCSU intended to implement a more comprehensive DAAPP with stricter guidelines to ensure that substance abuse issues are addressed adequately and in manner that will enhance compliance; however, that material did not provide any information about the new plan or the process that would be used to create it. The new report must address these matters.

Furthermore, the University must put procedures in place to ensure that future reviews are conducted on the required schedule. SCSU officials must take care to ensure that each review is in fact a probative inquiry into the program’s effectiveness and not merely a conclusory ratification of existing policy. The University must also produce detailed reports that clearly describe the research methods and data analysis tools that were used in the conduct of each review and do so with specificity. The report must also identify the official(s) who conducted the review and explain how the SCSU analyzed whether or not its disciplinary standards and codes of conduct regarding illegal drug use and alcohol abuse were consistently enforced. Finally, each report must also be approved by the University’s President and/or its Board.

Finally, the officials and directors of SCSU must take any other action that may be necessary to address the deficiencies and weaknesses identified in this finding as well as any related deficiencies that were detected during the preparation of the response to the Department's report and as may otherwise be needed to ensure that these violations do not recur.

SCSU is also reminded that the exceptions identified above constitute serious and persistent violations of the *DFSCA* that by their nature cannot be cured. There is no way to truly "correct" violations of this type once they occur. The University asserted that it has taken adequate remedial actions and is now in compliance with the *DFSCA* as required by its PPA.

Nevertheless, SCSU officials must understand that the Department deems compliance with the *DFSCA* is essential to maintaining a safe and healthy learning environment. This is true for all institutions regardless of their size, location, or organizational structure. Data compiled by the Department shows that the use of illicit drugs and alcohol abuse is highly correlated to increased incidents of violent crime on campus, increased absenteeism, and a failure to successfully complete a program of study. The compliance failures identified above deprived the University and its officials of important information about the effectiveness of any drug and alcohol programs that were in place during the Department's review period. Such failures may contribute to increased drug and alcohol abuse on-campus as well as an increase in drug and alcohol-related violent crime and constitute a violation of Federal law. For these reasons, the SCSU is reminded that corrective measures cannot and do not diminish the seriousness of these violations nor do they eliminate the possibility that the Department will impose an adverse administrative action and/or require additional corrective measures as a result.

The Department strongly recommends that SCSU re-examine its drug and alcohol abuse prevention policies, procedures, and programs on at least an annual basis and revise them as needed to ensure that they continue to reflect current University policies and are in full compliance with the *DFSCA*. Please be advised that the Department may request information on a periodic basis to test the effectiveness of SCSU's new policies and procedures.



## Conclusion

As noted throughout this report, SCSU violated numerous provisions of the *Clery Act*'s campus safety and crime prevention requirements, the HEA's fire safety measures, and the substance abuse prevention standards of the *DFSCA*. The Department considers compliance with these requirements to be fundamental to health and safety goal and objectives of these vitally important Federal laws. Access to accurate, complete, and transparent disclosures of safety information helps students, employees, and other stakeholders to make well-informed decisions about where to study, work, and live. The transparency created by these disclosures also empowers campus community members to play a more active role in their own safety and security. SCSU asserted that it has taken adequate remedial actions and that by doing so, is now in compliance with the HEA, the *Clery Act* and the *DFSCA*, as required by its PPA.

Nevertheless, SCSU officials must understand that the violations documented here deprived students, employees, parents, the media, and other interested parties of access to important campus safety, crime prevention, and fire safety information to which they are entitled. For these reasons, the University is once again advised that its remedial actions cannot and do not diminish the seriousness of these violations nor do they eliminate the possibility that the Department may require additional corrective actions as a result.

The Department's objective in conducting this and all Campus Crime Program Reviews is to improve the safety of America's college campuses. The development and implementation of a substantive corrective action plan is the first step to moving SCSU toward full compliance with the HEA, the *Clery Act*, and the *DFSCA* as soon as possible.

The Department strongly recommends that SCSU re-examine its campus safety and general Title IV policies and procedures on an annual basis to ensure that they continue to reflect current institutional practices and are compliant with Federal regulations. As part of these periodic reviews, SCSU officials may wish to review the Department's "Handbook for Campus Safety and Security Reporting" (2016) for guidance on complying with the *Clery Act*. The handbook is available online at: [www2.ed.gov/admins/lead/safety/handbook.pdf](http://www2.ed.gov/admins/lead/safety/handbook.pdf). The Department also provides a number of other *Clery Act* training resources. University officials can access these materials at: [www2.ed.gov/admins/lead/safety/campus.html](http://www2.ed.gov/admins/lead/safety/campus.html). The regulations governing the *Clery Act* can be found at 34 C.F.R. §§668.14, 668.41, 668.46, and 668.49.

Finally, in light of the violations documented during this review, SCSU management is advised to take immediate action to ensure that the University is in compliance with Section 304 of the Violence Against Women Reauthorization Act of 2013 (VAWA). VAWA amended the *Clery Act* to require institutions to compile and disclose statistics for incidents of sexual assault, dating violence, domestic violence, and stalking. VAWA also requires institutions to include new policy, procedural, and programmatic disclosures regarding sexual assault prevention and response in its ASRs. All institutions were already obligated to comply with the statutory requirements of VAWA and must include the new required amendments in the 2014 ASR. Because the Department issued Final Rules on the VAWA amendments on October 20, 2014, the new regulations went into effect on July 1, 2015, per the Department's Master Calendar. SCSU officials may access the text of the Final Rule at: <http://ifap.ed.gov/fregisters/attachments/FR102014FinalRuleViolenceAgainstWomenAct.pdf>.

### ***Appendix A - Supplemental Document Production***

*As part of its official response, SCSU also must submit the following information to the Department:<sup>12</sup>*

- 1) Copies of SCSU's original ASRs produced for 2014-2016 and any revised reports along with credible evidence of active distribution of each document to mandatory recipients. Suitable evidence of distribution may include copies of email messages used to transmit the report or other similar documentation.*
- 2) A copy of any progress or status reports or other information that has been developed since the site visit regarding SCSU's efforts to improve its campus safety and Clery Act compliance programs, especially with regard to the issuance of timely warnings and emergency notifications since the initial period covered by this program review.*
- 3) A statement and any supporting documentation regarding SCSU's efforts to implement the requirements of Section 304 of the Violence Against Women Reauthorization Act of 2013.*
- 4) A copy of SCSU's current DAAPP program materials, the University's two most-recent annual DAAPP disclosures with credible evidence of active distribution, and the two most-recent biennial review reports.*

*These materials must be submitted as part of SCSU's official response to this program review report.*

*SCSU's submission must reference the Program Review Control Number (PRCN) noted on the cover letter to this report. If any of the requested records were not produced or do not exist, SCSU officials must clearly communicate that fact in the response. In this context, SCSU officials are advised that no new documents are to be created at this time for the purpose of attempting to demonstrate compliance with any Clery Act or DFSCA requirement for past periods unless expressly instructed to do so by Department officials. Finally, the University is further advised that any failure to respond to this supplemental request for document production may result in a referral for the imposition of an adverse administrative action in addition to any such sanctions that may be recommended for identified violations that are ultimately sustained in the FPRD.*

SCSU's responses to these supplemental inquiries were deemed to be acceptable, except as specifically noted in this FPRD.

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<sup>12</sup> This information will be used to evaluate SCSU's compliance since the site visit. Information about deficiencies that are identified in the Department's review of this material will be cited in the FPRD.

### ***Exhibit A - CSA Interview Responses***

*Eight employees and the President of the Student Government Association (SGA) were interviewed by the review team. Three questions were asked of all interviewees and the following responses were captured.*

#### ***Interview Questions***

##### ***1. Overall do you feel the campus is safe?***

<b><i>Yes</i></b>	<b><i>No</i></b>	<b><i>Comments</i></b>
<b><i>X</i></b>		<i>But it's different; Not enough police</i>
<b><i>X</i></b>		<i>Absolutely. Working lights, can be more secure</i>
		<i>To a certain extent; No one at the gate checking ID's</i>
	<b><i>X</i></b>	<i>Call boxes don't work, egress open; Manpower low</i>
	<b><i>X</i></b>	<i>Gates unsecure; Manpower too low</i>
	<b><i>X</i></b>	<i>Was safe in the past</i>
<b><i>X</i></b>		<i>Crime prevention classes; foot patrols</i>
<b><i>X</i></b>		<i>Patrols are more vigilant</i>
<b><i>X</i></b>		<i>Was putting some preventive measures in place;</i>

##### ***2. Have you been trained in Clery?***

<b><i>Yes</i></b>	<b><i>No</i></b>	<b><i>Comments</i></b>
<b><i>X</i></b>		<i>Trained in 2003/2014</i>
<b><i>X</i></b>		<i>Trained in 2012 – Only person trained to do training</i>
<b><i>X</i></b>		<i>Trained in 2007 at another institution</i>
	<b><i>X</i></b>	<i>Went on the internet to learn</i>
	<b><i>X</i></b>	
	<b><i>X</i></b>	
	<b><i>X</i></b>	
	<b><i>X</i></b>	
	<b><i>X</i></b>	

***Exhibit A - Continued***

***3. Have you received formal Campus Security Authority training?***

<b><i>Yes</i></b>	<b><i>No</i></b>	<b><i>Comments</i></b>
	<i>X</i>	<i>Never heard of the term</i>
	<i>X</i>	<i>Somewhat familiar</i>
	<i>X</i>	<i>Haven't heard the term until recently</i>
	<i>X</i>	<i>Do the work of a CSA but not familiar with the term</i>
<i>X</i>		<i>Did training 2014 for CSA's</i>
	<i>X</i>	<i>Somewhat familiar</i>
<i>X</i>		<i>A few years ago</i>
	<i>X</i>	<i>Haven't heard the term until recently</i>
	<i>X</i>	<i>Not applicable; Non-employee</i>



***Exhibit B - ASR/AFSR Response***



**South Carolina State University**

POST OFFICE BOX 7395  
300 COLLEGE STREET, NORTHEAST  
ORANGEBURG, SOUTH CAROLINA 29117-0001

OFFICE OF THE  
GENERAL COUNSEL

**CRAIG E. BURGESS, ESQ.**  
DIRECT DIAL: (803) 536-7084  
CHRYSTEL ROGERS, PARALEGAL: (803) 533-3928  
FAX NO.: (803) 536-8374  
EMAIL: [CBURGESS2@SCSU.EDU](mailto:CBURGESS2@SCSU.EDU)

March 21, 2014

**VIA E-MAIL**

Ricardo Brown, Campus Crime Compliance Specialist  
U.S. Department of Education  
Federal Student Aid  
100 Penn Square East (Suite 511)  
Philadelphia, Pa. 19107

Re: Clery Act Compliance Questions  
South Carolina State University

Dear Mr. Brown:

Pursuant to your March 19, 2014, letter to President Thomas J. Elzey, I am responding on the behalf of South Carolina State University (SCSU) to your questions regarding the University's compliance with the Clery Act. Our responses are set forth below.

In order for you to have one primary contact at the University to expedite responses to any further questions you may have, please direct all of your future queries to me. I can always be reached at 803.536.7084 (w), 803.707.8799 (c), or via e-mail at [cburgess2@scsu.edu](mailto:cburgess2@scsu.edu). Please do not hesitate to reach out to my paralegal, Chrystal Rogers, at 803.533.3928 or via e-mail at [crogers@scsu.edu](mailto:crogers@scsu.edu), in my absence.

***South Carolina State University's  
Responses to March 19, 2014, Letter  
Regarding Clery Act Compliance Issues***

**Answers in Response to Item no. 1:**

- *Date work began on 2013 Annual Security Report (ASR):* October 15, 2013
- *Date 2013 ASR was completed:* Completed on or about October 29, 2013
- The 2013 ASR was prepared by SCSU's Police Chief, Mernard E. Clarkson.
- To date, the 2013 ASR has not been published or actively distributed to prospective or enrolled students. However, the 2013 Campus Safety and Security Survey, which contains three years' worth of crime statistics, is published on the SCSU website at <http://www.scsu.edu/files/CrimeStats101112.pdf>. (See Exhibit A).

***Exhibit B - Continued***

Mr. Ricardo Brown  
Page 2 of 2

**Answers in Response to Item No. 2:**

- The 2013 Annual Fire Safety Report (AFSR) is attached. (See Exhibit B).
- The 2013 AFSR was prepared by SCSU's Fire Marshal, Michael Tyler.
- The 2013 AFSR was published on the SCSU website at <http://www.scsu.edu/files/FireSafetyReport2013.pdf> on July 30, 2013. (See Exhibit C).
- The 2013 AFSR was not actively distributed to enrolled or prospective students.

**Answers in Response to Item No. 3:**

- The University did not publish or distribute either the ASR or AFSR for 2011 and 2012. However, SCSU published crime statistics in the form of the "Campus Safety and Security Survey" for 2011 and 2012 on SCSU's website at <http://www.scsu.edu/files/CrimeStats101112.pdf>.

**Response to request to "explain with particularity the circumstances related to the failure to produce [prior ASRs]."**

- It is not completely clear why ASRs for 2011 and 2012 were not published or distributed by SCSU. It appears that the prior administrations were unaware of the requirements of the Clery Act to publish and distribute ASRs based on their mistaken belief that merely publishing crime statistics on SCSU's website in the form of the "Campus Safety and Security Survey" was sufficient to comply with the Clery Act.

**Response to request to "provide sources utilized to compile ASR statistical data forwarded to the Department Campus Safety and Security Data Analysis Cutting Tool Data-base."**


- SCSU compiled the ASR statistical data based on "SCSU Police Department Incident Report[s]," which are used to populate a database of criminal incidents in South Carolina called the South Carolina Incident Base Reporting System (SCIBRS). SCIBRS is maintained by the South Carolina Law Enforcement Division (SLED). In compiling the ASR statistical data, SCSU initially obtains the information from SCIBRS and then compares it to the SCSU Police Department Incident Reports to ensure accuracy.

***End of Responses***

I hope these responses fully answer the questions you have asked. If you are in need of any further information, please do not hesitate to let me know.

With kind regards, I remain,

Very Truly Yours,

  
Craig E. Burgess

Attachments/Exhibit A-C  
Cc: Thomas J. Elzey, President  
Mernard E. Clarkson, Chief of Police

### ***Exhibit C - Timely Warnings***

**Sent by:** *[Deleted Admin]*

**12 Timely Notification ~ Armed Robbery**

08/20/2012 [Delete](#)  
13:20:23 EDT

On 8-20 at 1 a.m., three SC State students were robbed at gun point near Belcher Hall between the fence and the building. Two subjects wearing all black fled the area on foot, their direction is unknown. There are no further details at this time.

[View Delivery Details](#)

**Sent by:** *[Deleted Admin]*

**13 Testing of the Emergency Notification System**

07/27/2012 [Delete](#)  
07:47:46 EDT

Please be advised that this is a test of SC State University's Emergency Notification System. Anthony Caldwell, CIO

[View Delivery Details](#)

**Sent by:** *Anthony Caldwell*

**14 Test**

07/06/2010 [Delete](#)  
15:03:04 EDT

Hello, this is just a test of the e2Campus delivery system.

[View Delivery Details](#)

**Sent by:** *[Deleted Admin]*

**Exhibit D - Daily Crime Log**

CASES UNDER INVESTIGATION FOR THE MONTH JULY/AUGUST 2010 \_\_\_\_\_

DATE/ Incident REPORTED	Case Number	COMPLAINT(S)	SUBJECT(S)	VICTIM(S)	Disposition
7-26-10 Detention	10-00381		10K		Officer: M. L. House # Arrested:
7-26-10 C. S. A.	10-00382		10K		Officer: M. L. House # Arrested:
7-29-10 Sack Call	10-00383				Officer: M. L. House # Arrested:
7-5-10	10-00384		10K		Officer: M. L. House # Arrested:
8-5-10	10-00385				Officer: M. L. House # Arrested:



Exhibit D - Continued

CASES UNDER INVESTIGATION FOR THE MONTH JUNE 2010 \_\_\_\_\_

DATE/ Incident REPORTED	Case Number	COMPLAINT(S)	SUBJECT(S)	VICTIM(S)	Disposition
6-29-10 Sick Call	10-00356	[REDACTED]	[REDACTED]	[REDACTED]	Officer: <u>A. Moore</u> # Arrested: <u>0</u> Officer: _____
6-30-10	10-00357	[REDACTED]	[REDACTED]	[REDACTED]	# Arrested: _____ Officer: _____
7-1-10	10-00358	[REDACTED]	[REDACTED]	[REDACTED]	# Arrested: _____ Officer: <u>Bond</u>
7-1-10	10-00359	[REDACTED]	[REDACTED]	[REDACTED]	# Arrested: _____ Officer: <u>Kelley</u>
7-1-10 Code Red	10-00360	[REDACTED]	[REDACTED]	[REDACTED]	# Arrested: _____ Officer: <u>Blackwell</u> # Arrested: _____

**Exhibit E - SCSU Response to ED**

A copy of the two most recent biennial reviews of SCSU's alcohol and drug abuse prevention program as required by the Drug-Free Schools and Communities Act.	Item 13	None. SCSU has not conducted a biennial review of its alcohol and drug abuse prevention program.
An "audit trail" that includes a list of all arrests by local law enforcement agencies and all campus disciplinary referrals (organized by category of crime) for violations of laws involving alcohol, drugs, and weapons from 2010, 2011, and 2012 calendar years that were published in the statistical disclosures contained in SCSU's ASR's. The audit trail must include all disciplinary referrals from campus security, residence life staff, and/or any other campus security authority and must include the date and time of the incident, name(s) of the accused, and the type and location of the offense.	Item 14	Attached is SCSU's audit trail containing all of the information requested by DOE.
An "audit trail" that includes a list of all crimes (organized by category of crime and incident report number) reported to SCSU's Public Safety Office or other campus security authority that were included in the statistical disclosures contained in SCSU's ASR's for calendar years 2010, 2011, and 2012. The audit trail must include the offense type, date, time, and location of the incident, name of the accused, and the incident report number.	Item 15	Attached is SCSU's audit trail containing all of the information requested by DOE.
A list of all timely warnings and/or emergency notifications issued by the University during calendar years of 2010, 2011, and 2012 and a description of the means or media used to disseminate the warnings.	Item 16	Attached is a document listing all timely warnings and/or emergency notifications during calendar years 2010, 2011, and 2012.  The warnings/notifications were distributed via e2Campus ( <a href="http://www.e2campus.com/">http://www.e2campus.com/</a> ), an electronic service in which students, faculty, and staff are provided with the emergency notification messages via text to cellular devices and email accounts registered by the user.
A copy of the University's daily crime log for calendar years 2010, 2011 and 2012 (hardcopy or electronic).	Item 17	Attached is SCSU's daily crime log for years 2010, 2011, and 2012.
A percentage of students receiving Title IV, Federal Student Aid program funds for the most recent academic year,	Item 18	Attached is a document setting forth the percentage of SCSU students receiving Title IV and federal student aid.
A list of all SCSU officials (name & position) scheduled to participate in the program review entrance conference.	Item 19	<ul style="list-style-type: none"> <li>• Craig Burgess, General Counsel</li> <li>• Gregory Harris, Chief of Police</li> <li>• Other SCSU officials may participate in the conference after consultations with DOE officials.</li> </ul>

**Exhibit F - SCSU ASR Prior to ED Request**

South Carolina State University

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a new state of mind

ASR

**annual security report**

**Arrest Authority and Relationships with Other Agencies**

The Police officers employed by The South Carolina State Police Department are appointed and commissioned as State Constables by the Governor of South Carolina as provided by Title 23, Chapter 1, article 60, Code of Laws of South Carolina, 1976, as amended. They are empowered to enforce the laws of South Carolina, including the powers of arrest, anywhere in the state. Because these officers have statewide authority, they sometimes investigate crime on other than university property and make arrests for off-campus crimes that they witness.



The South Carolina State University Police Department has worked closely with many other law enforcement agencies over the years. Because of where the university is geographically located, any crime that occurs on campus may occur in the city or county. The Department has worked with federal, state, county and municipal law enforcement agencies to investigate matters of mutual interest. The Department participates in intelligence sharing associations with all areas of law enforcement agencies. The Department has a successful professional relationship with our local and state prosecutors, the court system, the coroner's office, insurance and other private investigators, and our regulatory agencies.

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PHONE: 1-800-260-5955 or 803-536-7000

MAIL: 300 College Street NE, Orangeburg SC 29117